

Chapter-1

What is law?

The term law means a set of rules. Law is the out come of human society. It is managed by the human civilization; law is the valid instrument to govern the society. Law is an English word derived from the stoic term *lag* it means *stable or universal*.

The term law means and includes different thing in different societies. The corresponding word for the term law in Hindus system is **Dharma** in Islamic system it is **Hukum** in Roman it is **Jus**, in French it is **Droit** and in German it is **Richt**.

The different meanings of the word law-;

1. Law means justice, morality, reason, order righteousness etc.(Natural law school)
2. Law means statutes, Acts rules, regulations, order, ordinance etc. (positive law school)
3. Law means rules of court, decrees, judgments, order of courts, injunction etc.(Realistic point of view)
4. means rights and remedies.
5. Law means duties liabilities and obligations etc.
6. Law means titles written laws judicial precedent, custom etc.

It is legal order-provided by political superiors, the whole body of legal precepts and all official control in a politically organized society.

Law is the command of sovereign (AS)

Law is the product of history (HS)

Law is the product of reason divinity and nature (NS)

Law is the menace of balancing of interest (SS)

Law is the decision of judge (RS)

Law is an instrument of suppression and exploitation peoples (socialist s)

Definitions of law

Plato- law is the finding of reality.

Austin- law is the command of sovereign.

salmond- law is not right alone, or might alone, but perfect union of the two. it is justice speaking to men by the voice of the state.

Holland- A law is a general rule of external action, enforced by a sovereign political authority.

Hindu text Vedas- law is the king of the kings, far more powerful and rigid than them; nothing can be mightier than law.

Crux point of law

Law is enacted by parliament, law is set of rules, uniformity/powerful, law maintains peace and order, law developed by society, law and justice are related and law is administered by the court.

Nature of law

-the law based on human reason and natural law,

-the law is an aggregate set of rules of social conduct and values,

- law is command,
- the law is the decision of the court,
- stability
- peace and change,
- law is the instrument of society,
- equal protection,
- law deciding disputes, etc.

Characteristic of law/importance/objectives

- equal treatment, i.e.art 13 of the interim constitution
- peace,
- justice,
- law applied by the sovereign authority,
- interpretation of court,
- supreme Nature,
- sanction,
- command,
- Recognition,
- Dynamic/changeable,
- rule of law,
- certainty,
- complexity etc.

Sources of law

Source means origin of law. salmond has classification of the sources of English law into 4 divisions.

1. Enacted law, having its source in legislation.
2. Case law; having its sources in precedent.
3. Customary law, having its source in custom and usage.
4. Conventional law, having its source in agreement.

legislation>the term legislation is derived from two latin words 'legis' which means a law and 'latum' which means to make put or set. Thus legislation means making a law/ law making bodies. It is the most potent and sovereign source of law making. it is the only source which has all powers of enacting law, replacing old laws and modifying current laws. i.e. contract law,EIA,FITTA Company law etc.

kinds of legislation

- 1.suprem legislation-parliament
- 2.subordinate legislation-university rules regulations and municipality rules etc.
3. colonial legislation- sometimes UK has rules so many countries.
- 4.executive legislation-
- 5.judicial legislation-
- 6.municipal legislation
- 7.autonomous legislation

2. precedent. in every country legal system consists of a judicial organ. the function of the judicial organ is to give just decisions in disputes. In deciding disputes. The judges are guided by custom in the beginning. as society progresses, legislation becomes the source of law and the judges decide case according to legislative law. Where there is no legislation on the particular point which arises in changed conditions, the judges depend on their own sense of right and wrong and decide the disputes. such decisions become authority or guide for subsequent cases of a similar nature and they are called precedents.(S.C.Verdict/judgement)

3. Custom. Custom is the embodiment of those principles which have commended themselves to the national conscience as principles of justice and public utility. Custom is the habitual behavioral system of the human society. English law and country code of 1910 BS in Nepal are the examples of custom.

Essential of a valid custom

Immemorial antiquity, continuous, obligatory force, certainty, consistency, reasonableness, peaceable enjoyment etc.

4. Equity-In the first time equity followed the chancery court of UK 1873.Equity means the body of rules formulated and administered by the court of chancery to supplement of the rules and procedure of the common law.

To enforce new right-new remedies-New procedure-based on justice/based on natural law etc. Tirthakumari Rana vs.Ramshankar shrestha –specific performance case

5. International treaty. it is another importance source of law. WTO,ILO,UN charter etc.

6. jurist writing- judges opinion advocate opinion and scholars opinions.

7. Religion.

Essential of good legal system

Rule of law, equal protection of law, independence judiciary, competent lawmaking authority, guarantee of fundamental right, liberal economic policy, privatization, good governance, accountability, protection of minority people, transparency, separation of powers, check and balance etc.

what is business law

-The term 'business law' may be defined as that branch of law, which comprises laws concerning trade, industry and commerce. it is an ever-growing branch of law with the changing circumstances of trade and commerce. With the increasing complexities of the modern business world, the scope of mercantile law enormously widened. It is generally understood to include the laws relating to contracts, sale of goods, partnership, companies, negotiable instruments, insurance, insolvency, carriage of goods, and arbitration.

-Business law encompasses the law governing contract, sales, commercial paper, agency and employment law, business organizations, property and bailment's. Other popular area is insurance, will and estate planning, and consumer and creditor protection.

-Business law may include issues such as starting selling or buying a small business or large business managing a business, dealing with employees or dealing with contracts among others.

-business law covers the trade, industry and commerce.

-Mercantile law may be defined as that branch of law, which deals with the rights, obligations of mercantile persons arising out of mercantile transactions in respect of mercantile property. An individual, a partnership or a company, carrying on business, is a mercantile person. This law in turn is founded on the law of contracts. For example, the laws of agency, suretyship, sale of goods, negotiable instruments, partnership, etc, which constitute special branches of mercantile law, are only specialized fields of contracts.

Definition of business law.

According to M.C.Shukla- Mercantile law may be defined as that branch of law which deal with the rights and obligations of mercantile persons arising out of mercantile transaction in respect of mercantile property.

M.C.Kuchhal- The term mercantile law may be defined as that branch of law, which comprises laws concerning trade, industry and commerce.

A.K.Sundaran- Business law provides legitimacy, security, control and incentives to business activities. It also protects rights interests of consumers of labor business and society.

Nature of Business law

The scope of the business law is very wide and it is extending day by day. Being an old discipline of social science it follows every walk of the human society. It is growing branch of law within the nation and the world as well.

-part of civil law

-regulates industry, trade and commerce,

-regulates business activities,

-to protection of business community,

-to protection of investor, labor, and stakeholders,

-to includes banking insurance and company etc.

-to settle business disputes,

-industrialization of country,

-increase productivity,

-security of local economy,

-transfer of technology etc.

importance of business law.

-protection of economic rights,

- regulation and systematization of business,
- development of business,
- enforcement of business contract,
- delivery of justice,
- social audit,
- social responsibility,
- achieving business goals,
- service to the society,
- economic development,
- settlement of business dispute,
- protection of rights and interests,
- maintain peace and order,
- to formation of business company,
- protection of trade and commerce,
- protection of property,
- to provide business ethics,
- to includes business conventions i.e.WTO
- to provide economic justice and
- to provide consumer and labor rights.
- to formation and commencement for business,
- for running the business,
- for adaptation,
- for dynamism,
- for expansion of business relation.

Sources of the Business law.

1. custom and usage- muluki Ain 2020
2. legislation/statutes- parliament made law, contract law, company law, IEA, FITTA and Arbitration law etc.
3. precedent/judicial decision. supreme court decision
4. English Mercantile law-
5. Professional opinion
6. treaty/business agreement/conventions-GATT,WTO,EU,SAFTA etc.

Chapter-2 Contract

Historical Background.

1. In England, Judicature Act, 1873 promulgated and the dispute between the court of common law and court of equity was settled.

-equitable remedy starting, contract Act and banking Act enacted by parliament.

2. In India- Indian contract Act, 1872 which was based on the common law.

3. In Nepal- Almost 2500 years ago (Vedic period) smriti of the Hindu philosophy were developed.

-Manusmriti- ch.8 has mentioned the contract of bailment and pledge, right and duties of finder of lost goods, interest rate, payment of loan, etc.

-Country code 1910 BS Based on dharmaśāstra, smriti etc. country code mentions the Lenden Bevarhar ko Mahal and Sahu Ashamiko Mahal and Registration ko Mahal.

-company Act, 1993-established of Biratnagar Jute mill and Raghupati Jute mill etc.

-country code 2020

-contract Act, 2023 was the first separate contract law in Nepal.

-contract Act, 2023 was repealed by the present contract Act, 2056

s/f/sf] cy{-Meaning of the contract

The law relating to contracts is governed by the contract Act, 2056. It came into force from Ashad 14 2057. It extends to the whole of Nepal.

Contract is an agreement entered into between two or more persons/parties subject to certain terms and conditions for a lawful consideration. e.g. A and B enter into an agreement. A promises B to sell his land/house for Rs.50000/- and B accepts to purchase it for the said amount. It is a contract between A and B.

Salmond- A contract is an agreement which creates and defines obligation between the parties to it. $\text{klfx? ljr bfoLTjsf] ;[hgf / kl/efiff ug]\{ ;Demf}tf g\} s/f/ xf]$.

F. Pollock- Every agreement or promise enforceable at law is a contract. $\text{sfg}^{\text{g}}4f/f \text{ nfu}' x'g] x/]s ;Demf}tf jf \text{ sa}'n g\} s/f/ xf]$.

S.W. Anson- A contract is an agreement enforceable at law made between two or more persons, by which rights are acquired by one or more to acts or forbearances on the part of the other or others. $\text{s/f/ eg]sf] b'O\{ jf b'O\{eGbf a9L JolQmx?sf] lardf ul/Psf] sfg}^{\text{g}}L \text{ dfGotf k|fKt ;Demf}tf xf] h;4f/f \text{ Ps jf ;f] eGbf a9L JolQmx?n] csf]\{ JolQm jf JolQmx?af6 s'g\}sf d u\}\{\{ jf \text{ gug}\}\{ clwsf/ k|fKt ub\{5g}$.

American Restatement of contract se.1 A contract is an agreement (Promise) for the breach of which the law gives a remedy. $\text{pn+3g x'Fbf sfg}^{\text{g}}L \text{ pkrf/ k|fKt x'g] sa}'n g\} s/f/ xf]$.

Indian contract Act, 1872 se.2(h) An agreement enforceable by law is a contract. $\text{sfg}^{\text{g}}4f/f \text{ nfu}' ug\} ;lsg] ;Demf}tf g\} s/f/ xf]$.

Contract act has started that the consent between two or more parties, to do or not to do anything which is enforceable by law. $\text{g]kfnL s/f/ P]g @)\%^{sf] bkmf @s s/f/ eGgfn]$

b'O{ jf b'O{eGbf a9L klflar s'g} sfd ug{ jf gug{sf nflu ePsf] sfg"gadf]lhd sfof{Gjog ug{ ;lsg] ;Demf}tf ;Demg'kb{5 .

The S.C. of Nepal has defined the term contract as an agreement of two or more parties with conditions. (Bijaya kumar Basnet vs. mayar keshav sthapit of K.M.C. et.al.NKP 2059 P37)

Set of promises+some consideration=Agreement
Agreement+Enforceable by law=contract.

Nature of Contract.

A Contract is an agreement between two or more parties which is enforceable by law. Such an agreement is the outcome of consensus ad idem (Mind of the parties) of the parties. the law of contract differs from other branches of law in an important respect. it does not lay down a number of rights and duties, which the law will enforce, it consists rather of a number of limiting principles, subject to which the party may create rights and duties for themselves, which the law will uphold. Contract law is said to be a part of 'Private law' because it does not involve or bind the state or persons that are not parties to the contract.

1. Law of contract is called as private Legislation.
2. such consent of the parties creates the contract-kanchhi kamini vs.kanchho kami case.
3. Meeting of the mind- An agreement is the outcome of consenting minds of the parties. the contracting parties must meet their minds as regards the subject matters of the same thing and at the same time, unless there is a meeting of mind their can be no contract. To fix a document whether is a contract or not there must be seen meeting of mind of the contracting parties i.e.Tirthakumari case.
- 4.the term contract does not disqualify the validity of a contract-tithakumari case.
- 5.Two parties.
- 6.promissory Nature
- 7.legal obligations- Legal obligations are the binding force for contracting parties in a contract. It means the legal relationship which includes and the compels the parties to fulfill their promises i.e.the agreement between a husband and wife regarding domestic affairs is not a contract.(Balfour vs.Mrs Balfour 1919)
8. Parties are autonomous- The parties of contract are autonomous to determine the matter and volume of consideration and to enter or not enter into a contract i.e. se.4 of the contract Act,2056.

9. Guilty party must be liable se.74and75 of the contract Act, 2056
10. Sanctity of contract- the common law system protects the contract from commission of fraud and misrepresentation, mistake, undue influence and coercion and endeavored to curb the economic exploitation of employee's doctrine of restrain of trade.
11. Commercial transactions.
12. A contract creates and defines the obligations legally, Tirtha kumari Rana case.

Essential Elements of a valid contract.

To be a valid contract, an agreement needs various elements. If these elements are not, there in the contract law cannot enforce such an agreement. Contract Act, 2056 mention few things as an essential elements of valid contract. All agreements are not contract. All contracts are agreements. Only those agreements which are enforceable by the law are contract. Following elements are essential for a valid contract.

1. Offer and Acceptance- there must be two parties to an agreement, i.e.one party making the offer and the other party accepting it. Offer means if somebody makes proposals to do something or not to do something. Offer and acceptance are most important elements of contract.se.2b/c of contract Act.

2. Intention to create legal relationship:-when the two parties enter into an agreement, their intention must be to create legal relationship between them. If there is not such intention on the part of parties, there is no contract between them,i.e domestic affairs is not contract, Balfour vs. Balfour 1919.

3. lawful consideration:- in agreement to be enforceable by law must be supported by consideration. Consideration means 'Quid pro Quo' something in return. The agreement is legally enforceable only when both of the parties give something and get something in return. It has motivation power to fulfill the promise. It must be real and lawful, which may be in past present and future. (se.2 d,4 and 13 k)

4. capacity/competency of parties:- The parties to the agreement must be capable of entering in to a valid contract. According to sec.3(1) of NCA, any person other then those mentioned below are eligible to enter into contract; those who have not complete 16 years of age(minors) and those who are of unsound mind and legally disqualified persons.

5. lawful object:- whenever parties inter into contract, there object should be for lawful purpose and lawful object. Those objectives are not lawful if they are a illegal, immoral and opposed to the public policy. (sec.13 k of NCA)

6. Free consent:- parties who enter into a contract must give their free consent. The consent of the parties is said to be free when they are of the same mind on all the

material terms of the contract. Parties must be giving the approval upon the contract by their inner heart without any kind of pressure from outside. The consent is said to be free when it is not caused by; coercion, undue influence, fraud, misrepresentation, Mistake.

7. Two or more then two parties or plurality:-since nobody can agree with himself, there must be at least two parties to create a valid agreement and ultimately contract.

8. Agreement not expressly declared void:- the subject matter of the contract should always be lawful. Parties should not enter into such contract which are expressly declared void by the law. Sec 13 of NCA mentions about void contract. The following contracts are void ab initio; i.e. I. contract restraining any trade, profession or business which is not prohibited by current Nepal law. And ii. Contract restraining marriages of kinds other than those prohibited by current Nepal law etc.

9. Certainty and possibility of performance:- the agreement must be certain and not vague or indefinite.

10. Written and Registration:- in order to prove the contract in the court of law it should be in written form, but there is no specific provision in Nepal, which says that contract should be registered. if you wish, you could register it.

Difference between agreement and Contract. contract.

- All agreements are not contracts.
- limited or certain scope.
- create legal obligations
- legal remedy
- it is emerges from an agreement
- it is based on contract law
- all contracts are enforceable by law
- Essential elements must be present.
- determined by the law.

agreement

- all contracts are agreements
- wider scope
- no legal remedy
- not create legal obligation
- it is emerges from consent of the parties
- it isn't based on contract law
- all agreement are not enforceable by law
- the elements of a contract are not necessary
- it is not determined by the law.

Kinds of contract

a. According to their form:

- i. Formal and Informal contracts:- contracts may be formal or informal. Usually, formal contracts are in written form, and informal contracts are in oral form.
- ii. Express and Implied contracts:- contract may be either express or implied. The difference between these two is just in the way in which the consent of the parties is manifested. Contracts are express when their terms are stated in words by the parties. Express contract are manifested by words and implied contracts are manifested by conduct of the parties.
- iii. Direct and Indirect contracts:- contract may be direct or indirect. Direct contract are those which is entered between at least two parties either in a written or oral form. Indirect contract are those where there is no direct contract between parties but the law presumes that there is a contracts between the parties and such could be enforced. For example; Necessaries supplied to the minor, refunding the amount paid by mistake.(sec.11 of NCA)

b. According to their effect:

- i. unilateral and Bilateral contract:- contracts may be either unilateral or bilateral. Unilateral contract means a contract in which only one party is bound. It does not mean the contract by one party only. For unilateral contract also, there must be two parties. For example: the offer for a reward for the return of lost goods; the making of a promissory note. Bilateral contract are those in which both parties are bound. In bilateral contract promise is exchanged for other.
- ii. Void contract:- a void contract will have no legal effects whatsoever. if a contract is void neither party will be able to sue each other.(sec.13 of NCA)
- iii. voidable contract:- A voidable contract is one where the parties thereto have the power to avoid the legal relations created by the contract. for example; contract created by coercion, undue influence, fraud or misrepresentation.(sec.14 of NCA)
- iv. Unenforceable contract:- Unenforceable contracts are valid in all respects that one or both parties can not be sued on the contract. i.e. contracts in respect of which the right of action is barred by limitation law.

The major provisions of the contract Act, 2056 are as follows;

1. **Definition:-** In section 2,15, 25,35,40,56 and 65 different term have been defined respectively i.e. valid contract , offer and acceptance, free consent, consideration, bailment, indemnity, contingent contract, agent and law of carriage and goods etc.
2. **Autonomy of parties:-** according to the se. 4 of NCA has provided the provision that the contracting parties are autonomous to determine consideration and its extent. the terms and conditions of the contract and the nature of remedy in its violation, as well as measures for resolving disputes under the contract. it was not mentioned in the former Act.

3. **indirect\quasi contract:-** se.11 of the Act has provided the provision of the indirect or quasi-contract, which is not created by the offer, acceptance by capable parties with free consent of the consideration by the contracting parties but by the operation of law.
4. **contingent contract:-** se.12 of NCA has mentioned the contingent contract. such contract will be created by the occurrence of the collateral event. such events are uncertain at the time of its creation. that must be happened in future to create the contract, it was not mentioned in the former Act.
5. **specific contract:-** this Act have provided the provisions relating to some specific contract and their rules. that are contracting to indemnity and guarantee chapter-4, bailment and pledges cha.5 and 6, sale of goods cha.7 and agency cha.8 etc.
6. **void and voidable contract:-** se.13 of NCA has declared almost one dozen of contracts as void and se.14 has provided the four circumstances- coercion, undue influence, fraud and misrepresentation.
7. **time, manner and place for performing contract:-** the Act has included some provisions concerning when, how and where the contract must be performed under its chapter 10 of NCA.
8. **remedy for the breach of contract:-** chapter 12 of NCA has provisioned about the breach of contract . there are provided the remedial provisions for the breach of contract for the sake of recovering amount cancellation of contract and seeking the court order.
9. **Performance of contract:-** chapter 11 of NCA HAS clearly provisioned the place, time and manner of the performance of the contract. There are the supportive provisions of the doctrine of privity of contract. Only the privity parties are entitled to ask for the performance of contract.
10. **Contract according to the offer made to public:-** provisions regarding offer made to the public and rights and liabilities arising out thereof are mentioned under se.10 of NCA.
11. **time limitation:-** the Act has included this provision in se.89 and also extended the period of limitation than the former Act. the se. deals with the following provision, they are; a. if the current law prescribes any specific limitation in respect to any specific contract or any specific matter relating to contracts, such time is applicable. b. in the case of void contracts, to have them declared void at any time, c. in the case of void able contracts, with in 1 year from the date when the party of that contract has knowledge of the reason for having the contract declared void, d. in the case of contracts mentioned in chapter 7, contract of sale of goods within 2 years from the date of occurrence of the reason for filing law suits, and e. in the case of any other claim under the present contract Act within 2 years from the date of occurrence of the reason for filing law suits for such claims.

Evaluation of contract law.

The NCA seems highly influenced by the Indian contract Act, 1872. in the other words it is carbon copy of Indian Act . NCA may be notable that the Act

has attempted to modify and remove the weakness and lacking of the former contract Act 2023 by adopting different modern aspects of contract. It has insufficient provision of consideration, the rights and liabilities of third parties in a contract. it is silent on the capacity and liability of natural and artificial persons and terms and forms of the contract. However, the act has still some weaknesses and lacking so that compulsive situation arises to study foreign legal provisions as usual.

Offer and Acceptance

The word offer is synonymous with the word proposal. To offer means to present something that it may be accepted or reject. It is an expression of willingness to do something. Offer is a proposal of the first party to another for valid assent.

Richard- An offer is an expression of willingness to contract on certain terms made with the intention that a binding agreement will exist once the offer is accepted.

S.W.Anon defines the term offer as willingness signified with an intention to obtaining legal validity.

sec.2 a of the I.C.A. 1872 defines proposal as follows. when one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal.

sec.2(b) of the NCA,-offer means a proposal put by a person to another with a hope to get assent from him for doing or not doing any work.

Offer + acceptance = agreement

Agreement + legality = contract

i.e.

Ram says to Hari will you buy my bike for Rs.100000/- lakh, this is an offer. if Hari says yes the offer is accepted by the offeree and a contract comes into existence. Here, the offeree becomes promisee.

A valid offer may be expressed or implied. An expressed offer is made by using words in writ ten form or verbal that makes a contract formal. An implied offer is made by the conduct of the parties or circumstances of the case.

features of an offer:-

- 1.An offer is an expression of willingness to do or not to do something.
- 2.It is made to another party.
- 3.There is an intention to obtain the assent of the offeree.
4. There is an intention to create a legal obligation.
5. it may be specific or general, express or implied.

Rules Regarding the Valid offer.

1.Creating legal Relations:- The offerer must intend to create legal relations. After the acceptance of offer it amounts to legal obligations. A social party or an invitation to play cards, a promise to buy a saree for one's wife can not be a legal relation because there is no intention to create legal relationship.(Balfour vs.Mrs Balfour case)

2.offer must be certain, and should be made to a definite person:- To constitute a valid contract, there must be clear and certain terms. An offer of latent ambiguity creates confusions. it does not convey the exact meaning. And an offer can be made to the particular person or to a definite group of persons in general.

3.Offer may be conditional:- An offer may be made subject to conditions and that must be clearly conveyed to the offeree. But conditions against any law, morality and public policy can not create legal obligations. An unreasonable treatment and ignorance of offeree to the conditions are not valid.

4.Offer must be communicated:- Where there is no communication of offer to the offeree, there is no acceptance resulting in the contract.without knowledge of an offer, how can an offeree accept it. Sec.6 of the NCA and leading case is Lalman Shukla vs.Gauri dat 1913.

5.offer may expressed or implied:- An offer may be made by expression in written or spoken forms. But when an offer is made by the act or conduct of the party, that is an implied offer e.g.trolley bus offers in an implied way by running its bus from Kathmandu to Bhaktapur.

6. offer is seeking acceptance of other party:- An offer is made to seek acceptance of the party to whom it is made. An offer is not valid if there is mere inquiry or expression of statement.

7. Offer may be specific or general:- An offer may be specific or general. A specific offer is made to a specific person and a general offer is made to the general public or the world at large. For example, A offers to sell his bike to B at a price of Rs100000/- it is a specific offer and a cable car company runs its business from Kurintar to Manakamana; this is an offer to the general public at a fixed rate and schedule. This is a general offer.

8. Offer should not contain the term that non-communication or rejection would amount to an acceptance:- NCA mentions that an offer should not contain a term that non-communication of acceptance or rejection of the offer would amount to acceptance automatically. This type of condition makes the offer invalid in the eyes of law. An offer is valid when it comes to the knowledge of the offeree. (Sec.7 of NCA)

9. Invitation to offer is not an offer:- Invitation to offer is only a statement of intention, which differs from a valid offer because there is no intention of offerer to obtain assent of the proposer or client and to create a legal relationship with the party. An offer differs from the following circumstances; invitation to sell, quotations of price, advertisement and catalogue etc. (Fisher vs. Bell 1961 UK)

Lapse or Revocation of an offer

- By the death or insanity of either party sec.9 c of NCA
- By the lapse of the agreed time
- By non-fulfillment of the conditions.
- By the rejection of the offeree.
- By a notice of revocation of the offerer.
- By subsequent illegality or impossibility.
- By destruction of subject matters.
- By non fulfillment of condition
- By counter offer
- By notice

Acceptance:

Acceptance is an agreement to receive. To accept means to agree to receive or to do something offered or proposed. In other words acceptance is the expression of assent of the party to whom it is made.

Anson-acceptance of an offer is the expression by words or conduct of assent to the terms of the offer in the manner prescribed or indicated by the offeror.

s.2(c) of the NCA defines acceptance as the consent given by the person to whom a proposal or offer has been presented in the same sense in which the proposer has taken the substance of that proposal. Without acceptance of an offer or proposal, no contract can come into existence. When the offerer it is said to be accepted. An offer after acceptance becomes a promise which is obligatory to the parties concerned.

Acceptance means an assent given by the offeree upon the offer in the same sense as the offeror had intended. Acceptance validates the contract; it gives it life. It is at that moment that a contract exists. The valid acceptance is capable of creating legal obligations. Acceptance can be two types on the ground of target of offer, general and specific.

OFFER+ACCEPTANCE=CONTRACT

Who can accept?

It must be made by the person to whom the offer is intended. When an offer is made to a particular person, it can be accepted by him alone. If it is accepted by any other person, there is no valid acceptance. The rule of law is clear that if you propose to make a contract with z, w cannot substitute himself for z without your consent.

Rules regarding Acceptance. A valid acceptance should have to fulfill the following factors.

- 1.It must be absolute and unconditional.
- 2.It must be communicated to the offeror.
- 3.It must be according to the mode prescribed or usual and reasonable mode.
- 4.It must be given within a prescribed or reasonable time.
- 5.It cannot be implied from silence.
- 6.Silence does not amount to acceptance.
- 7.Acceptance must be given before the offer lapses or before the offer is withdrawn.
8. It cannot go before an offer.

lapse of acceptance

- By notice sec.8(2)
- By death or insanity of the acceptor sec.9(E)
- By lapse of time sec.9(b and c)

Consideration

Consideration in its essential nature is an aspect of the fundamental notion of bargain, other aspect of which is offer and acceptance. Consideration, offer and acceptance are an indivisible trinity, facets of one identical notion which is that of bargain.

Consideration is one of the most important essential elements of a valid contract. It is the life support of contract without which no contract can exist. Consideration means 'something returns'.

Justice pattern- 'consideration means something which is of some value in the eye of law.....consideration may be some benefit to the plaintiff or some detriment (xfgL) to the defendant.'

pro.pollock- consideration is the price of promise of the next parties.

sec.2 (d) of N.C.A. Consideration means-Promise made to perform or not to perform any work in consideration of performance or non-performance of any work prescribed in the proposal.

sec.2 (d) of the I.C.A.1872 defines consideration as; when, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise.

Sec.13 (k) of NCA mentions that contract having unlawful consideration is void ab initio. Consumer protection Act sec.2 (e) mentions that consideration is necessary to provide service.

Supreme Court of Nepal in its decision had mentions that".... transfer of immovable property unilaterally from one party to another without consideration can not be held as within the contract Act 2023.(*Ratnaman singh tuladhar vs. siddhiman singh tuladhar NKP 2052 P.713*)

Consideration means 'Quid pro quo' or something in return.' the agreement is legally enforceable only when both the parties give something and get something in return. Consideration need not necessarily be in cash or kind. It may be an act or abstinence or promise to do or not to do something. i.e.*D agrees to sell his car to B for Rs.10,000/- Car is the consideration for B and price is the consideration for D.*

Types of consideration

1. Past consideration:-When a consideration is given before the time of creation of the contract, it is a past consideration.
2. Present consideration:- when a consideration is moved at the time of the creation of a contract or simultaneously with the promise, it is called a present consideration. this type of consideration may be a series of performance of payment or service from past to future continuously.
3. Future consideration:- when the consideration is to be moved to a future date. it is called a future consideration. Both the parties may agree to fulfill their part of liability at a certain future time.

Rules Regarding Consideration

- Consideration must be real and something of value in the eye of law(sec.10(1))
- Consideration must move at the desire of the promisor.
- consideration may be past, present and future.
- consideration must be lawful.
- consideration need not be adequate.

- consideration must be real and not illusory.
- It must not be illegal, immoral or opposed to public policy.

Exceptions to consideration

General Rule: "contract without consideration is void" but there are some exception to this general rule. CONTRACT Act of Nepal has not mention about the exceptions relating to consideration. But s.25 and s.185 of the Indian Contract Act.1872 mention about the exception which are discussed below.

1. Natural love and affection:- An agreement without consideration is also enforceable, if it is based on natural love and affection. It is valid only if the following requirements are fulfilled.

-it is made by written document.

-the document is registered according to that particular law which is in force.

-it is made on account of natural love and affection.

Nepalese law gives validity to the 'deed of gift' of immovable or movable property to anybody. A parent may transfer their property to their own son and daughter.

2.Compensation for voluntary services:- A promise to compensate partially or fully for the service of a person who has voluntarily done something for the promisor or something which the promisor was legally compelled him to do is also valid.sec.25(2) of the ICA)

3. promise to pay time barred debt (Dofb gf3]s]f C0f ltg]{ sa'ndf):- the promise to pay a time barred debt also is enforceable even without consideration. But this debt must be in a written form and signed by the creditor or his authorized agent.

4. Donation or Gift:- A deed between the donor and the receiver is valid though there is no consideration. Providing gift without any thing in return will be a valid one.

5. Agency contract:-No consideration is necessary to create an agency. An agent acts for the interest of his principal with the connection of third party. sec.185 of ICA.

6. In case of waiver of contractual rights, consideration is not necessary.

Contractual capacity

Every person is presumed by law to be competent to enter into contract, and if any one claims exemption from liability on the ground of incapacity to contract, he must strictly prove such incapacity. The term contractual capacity means the legal capacity of the contracting parties to contract. The parties who enter into a contract must have the capacity to do so. Capacity here means competence of the parties to enter into a valid contract.

According to s.3 of NCA, Any person other than those mentioned below may conclude contracts:

- One who has not attained 16 years of age (minors?)
- One who is of unsound mind?
- One who is disqualified by the law?

According to s.11 of ICA, Person is competent to contract who

- Who has attained 16 years of age,
- who is sound mind and,
- who is not disqualified from contracting by any law, to which is subject.

The age bar of a minor differs from different purpose and in different country. In India a person is adult if he has attained 18 years, In England 21 years and in Nepal 16 years of age. According to the Nepalese contract Act, sec.3 the person who has attained 16 years of age is capable to enter into a contract. Under the age of 16 years is called minor. This age bar differs law to law 14 years by labor law, 2048, 18 years by election Act, and 20 years by provision of marriage of country code of Nepal.

NCA s.13(j) mention that contract with minor is void.

Rules regarding the agreement with a minor.

1. Validity of contract:- Because of incompetence to contract an agreement is void from the beginning if it is created with or by a minor party. It has no legal effect. i.e. the privy council has upheld this view in Mohiri Bibi vs. Dharmodas Ghose 1903 (minor mortgaged house case) [1903] AC 1 (PC).

2. The ratification after attaining the age of majority is not valid (per Lord Macmillan in *McLaren v. O'Connell*) :- Ratification means the subsequent adoption and acceptance of an act or agreement. A minor's agreement being a nullity and void ab initio has no existence in the eye of law.

3. No estoppels against minor (per Lord Macmillan in *McLaren v. O'Connell*):- This rule does not apply to a minor's agreement. Liability arisen by the rule of estoppel on the ground of misrepresentation of his age is not to be fulfilled by the minor party. (*Gadigepa bhimappa mets vs. balangowda bhimangowda* AIR 1913 Bombay- 481).

4. the minor as a partner:- a minor can be admitted to the benefits of the partnership business but cannot be a partner legally.

5. No performance:- a contract with a minor is absolutely void from the beginning void ab initio. there can be no question of specific performance of such an act from the minor party.

6. Insolvent:- minor can not be declared insolvent person until he becomes an adult. Minor cannot be adjudicated insolvent because he is incapable of contracting debts.

7. minor can be a beneficiary or promisee:- a contract is not void by the law if it is beneficial to the minor. the other party has to fulfil his liability to the minor party. but the contract created liability for minor becomes void, because the law protects the rights of a minor. i.e. the American insurance co. ltd vs. madanlal sonu lal 1935 Bombay. (1935) 1 Bom. LR 413. The contract created liability for minor becomes void, because the law protects the rights of a minor. i.e. the American insurance co. ltd vs. madanlal sonu lal 1935 Bombay. (1935) 1 Bom. LR 413.

8. The minor as a shareholder:- according to Nepalese law a minor can be shareholder of a company with the signature of the guardian in the share subscription application but cannot be the director of a public company.

9. The minor as an agent:- The minor is not personally liable for his acts during the course of dealings, a minor binds the principals by his acts because the minor is not the party of contract.

10. Contract by minor and major jointly:- If an agreement is made by a minor jointly with a major person the minor is not liable under the agreement but the major person is fully liable and the agreement can be enforced against him. i.e. Sain Das v. Ram Chand 1923 Lakhanuw.

11. contract for necessities:- The person supplying necessities or rendering services to minor or anyone whom he is legally bound to support is entitled to get reimbursement from the property of such minor i.e. father mother and the dependent on him the minor is liable to pay out of his property for them. (sec. 11(1) of the NCA)

12. Minor cannot be adjudicated insolvent:- Minor cannot be adjudicated insolvent because he is incapable of contracting debts.

Persons of unsound mind.

Sound mind is one of the essential elements of a valid contract. If an agreement is made with a person of unsound mind, it will be void from the very beginning. Law protects the person who is weak to rational judgment. Sec. 12 of Indian Contract Act, defines sound mind for the purpose of contracting. A person is said to be of sound mind for the purpose of making contract, if at the time when he makes it is capable of understanding it and forming a rational judgment as to its effect upon his interest.

Unsound mind may arise differently. That may arise from,

a. Idiot: it is God-given and permanent, with no interval of soundness. The mental powers of an idiot are completely absent because of lack of development of brain.

b. Lunacy or insanity:- It is a disease of the brain. A lunatic loses the use of his reason due to some mental strain.

c. Drunkenness:- it produces temporary incapacity, till the drunkard is under the effect of intoxication provided it is so excessive as to suspend the reason for a time and creates impotence of mind.

d. hypotnism:- it also produce temporary incapacity, till the person is under the influence of artificially induced sleep.

e. Mental decay:- One account of old age etc.

Disqualified person

Disqualified persons refer to those person, who can not make a contract due to some reasons. Infact, a minor or person of unsound mind too can not enter into contract, but they are not supposed as disqualified person. So disqualified persons should refer to those persons, who are not capable to enter into contract due to the reason other than minority and insanity. the persons who are supposed to be disqualified by law to make contracts are;

- a. Foreign sovereign:- It refers to foreign government, foreign ambassador and other diplomatic persons working in foreign embassy. Foreign diplomats can enjoy diplomatic privileges; the court of a country can not ask or compel them to attend it. The citizens of a country can not directly enter into contract with them. If needed, they should make contract with their representatives of authorized agents.
- b. Alien enemy:- Alien is a citizen of foreign country. The citizens of country can not enter into the contract with Alien enemy.
- c. corporation:- a corporation is capable to enter into a contract but the corporation should make contract within the limitations fixed by law or by its memorandum and or article of associations.
- d. Drunkard:- It refers to a person at intoxicated position because of too much drinking of drugs, beer and wine.
- e. Insolvent person:- law presumes that an insolvent person is also disqualified for making contract.
- f. Married woman:- As a major, married women can enter into a contract. So far as the sale of her immovable property is concerned, she needs to take the permission from her husband.
- g. Professional persons:- professional persons like doctors, engineers, Advocates and professors can not enter into a contract in England. In Nepal and India, there is no any legal provision for professional disqualification.
- h. Trade union:- It is capable of suing or being sued in its own name. At common law, a member of a trade union who is improperly expelled from the union in breach of

union rules or in defiance of the rules of natural justice can bring an action for breach of contract against the union and recover damages.

FREECONSENT

INTRODUCTION

The English term 'consent' was derived from Latin word 'consentire'. It means '*permission*' or *agrees to do or agreement*. Free consent provides for a contract, meeting of mind, enforceability and legal remedy for an aggrieved party.

People who enter into contract must give their free consent. The consent of the parties is said to be free when they are of same mind on all material terms of contract. It is essential to the creation of a contract that the parties have consensus ad idem i.e. meeting of the mind. They must agree upon same thing in the same sense at the same time and their consent is free and real. As Salmond said that if any error in consensus ad idem or meeting of the mind of the parties, then there is no contract.

S.2 (c) of the Nepalese contract Act defines consent as "consent given by a person in the same sense in which the offeror has taken the substance of the proposal presented by him to the former".

s.¹³ of the I.C.A. defines consent as "two or more persons are said to consent when they upon the same thing in the same sense."

S.14 of the I.C.A defines free consent: consent is said to be free when it is not caused by-

1. Coercion
2. Undue influence
3. Fraud
4. Misrepresentation

If the contract is made undue influence, fraud and misrepresentation, then the contract will be avoidable at the option of the aggrieved party. If both parties are mistaken as the matter of fact then the agreement would be void.

-effect of the agreement of absence of consent, void-ab-initio (void from the very beginning. *Result is no legal effect i.e. Bala devi vs. Santi Mazumdar AIR1956*)

1. COERCION

a) Meaning of coercion

The term coercion means compelling a person to do something or to force or threaten somebody to do something. Coercion is the act of forcing someone by pressure to commit a crime or to do something against law. Sec.14 of N.C.A.²⁰⁵⁶, says- consent is said to be caused by coercion when it is obtained by pressure exerted or against the will of party by either of following techniques.

- committing or threatening to commit any act forbidden by the current Nepal law. (Threat to life and prestige)

- Unlawfully detaining or threatening to detain any property.

s'g} JolQmnfO{ lghsf] OR5f lj?4s'g} s/f/ u/fpg] dg;fon] lghsf] ;Dklt /f]Ssf/fVf]s]f jf /fVg] wDsL lbPsf] jf lghsf] lhp Hofg jf OHhtdf wSsf k'/ofpg] wDsL lbPsf] jf k|rlnt g]kfn sfg"g ljl/t cGo s'g} sfd u/]s]f jf ug{ wDsL lbPsf] eP s/sfk u/]s]f ;Demg'kb{5 .

coercion is the committing or threatening to commit, any act forbidden by indian penal code, or the unlawful detaining, or threatening to detain, any property to the prejudice of any person whatever with the intention of causing any person to enter into an agreement .s/sfk eg]sf] s'g} JolQnfO{ s/f/ ug{ afWo ug]{ p2]Zon] ef/lto b08 ljwfgsf] ljl/t s'g} sfo{ ug'{ jf ug]{ wDsL lbg' cyjf u]/ sfg"gL tl/sfn] s'g} JolQmsf] ;Dklt /fVg] wDs lbg' xf] .

When a person is compelled to enter into a contract by the use of force or under a threat, coercion is said to be employed.

The threat amounting to coercion need not necessarily proceed from a party to contract. It may precede even from a stranger to the contract. Likewise, it may be directed against any body-not necessarily the other contracting party. The intention of the person using coercion should, however, be to cause any person to enter into an agreement.

Example: B threatens to shoot and kill Sandeep and his family if he does not lend Rs. 10000 to Shekher. Sandeep agrees to lend the amount to Shekher under coercion. This contract is voidable at the option of Sandeep (Aggrieved party.)

Conditions or circumstances for non-coercion.

Threat to lawsuit, high price, high rate of interest and threat to commit suicide is not condition for coercion.

Effect of coercion

A contract under coercion is voidable one. The party whose consent is caused by it is entitled to take action against the contract.

Sec. 84 of NCA: The party rescinding a voidable contract must refund money or thing or any other benefit received by him under the contract, to the person from whom it was received. The guilty party cannot avoid the contract; the contract gets validity as soon as the limitation prescribed by the law expires. In case of a contract caused by coercion the burden of proof lies on the aggrieved party.

2. UNDUE INFLUENCE

The term undue influence is a moral coercion that means dominating the will of another with a view to obtain unfair advantage over the other. Undue influence is the domination of will of other by moral coercion. (Padma Singh Angdambe vs. Dharmananda Bajgain NKP 2045)

sec. 14(1) (b) of Nepalese contract Act define, undue influence means influence exercised by a person upon another person who is under his influence for personal advantage or interest with an intention to have unfair benefit.

If the contract is entered into between persons in a relationship power imbalance; the law calls it 'undue influence'.

Sec. 16(1) of the ICA, Contract is said to be induced by undue influence where the relations subsisting between the parties are such that one of them is in a position to dominate the will of the other and he uses that position to obtain an unfair advantage over the other.

Undue Influence is the domination of a weak mind by a strong mind to the extent of exploitation in the context of an agreement.

Essentials of undue influence

1. One of the party of the contract must be in a position to dominate the will of the other. (s/f/sf] Pp6f klf csf]{ klfsf] OR5fnfO{ bjfpg ;Sg] l:ytLdf /x]sf] x'g'kb{5_ for examples; master-servant, convict-police, patent- child and teacher-student etc. manusingh vs. umadat pandey Allabad, teacher and student case.

2. person of fiduciary relationship (kf/:kl/s lj:jf;sf] ;DaGw ePsf Joltm_ i.e. A lady gifted all her property to a medical man who was attending her. She disputed the gift deed as soon as she recovered from illness. The medical man's suit for possession was set aside. - *sunder kumari vs. kishor*.

3. contract made between person's of fiduciary relationship.

4. Where one party holds a real or apparent authority over the other (hxfF k|Tolf ?kdf b]lv]g] jf jf:tljs clwsf/ Ps klfn] csf]{ klfdyL /fVt 5_ bkmf !\$! v, @ O NCA.

5. where one party makes a contract with the person of mentally weak and who cannot think about his benefit because of oldness, illness or mental distress. (hxfF Pp6f klfn] a[4fj:yf, la/fdL cj:yf, zf/LI/s jf dfgl;s ba{ntfsf sf/Of cfkmgf] lxtsf] ljrf/ ug{ g;Sg] Joltm ;Fu s/f/ ub{5. bkmf !\$! v, @cf. i.e. sher singh vs. pirthi sing AIR 1975

Presumption of undue influence

- Inadequacy of consideration.

- Unconscionable transaction. c;Gt'Int sf/f]af/

- there is a inequality between the parties in respect of social status, position, post, age etc of the other parties. klfx?sf] ;fdflhs x}l;ot l:ylt cf]xf]bf pd]/df leGgtf ePdf

- there is a fiduciary relationship between the parties. klfx?df lj>jf;sf] ;DaGw /x]df

Effect of undue influence

A contract formulated by undue influence is voidable at the option of aggrieved party whose consent is obtained by using undue influence. The aggrieved party is entitled to avoid the contract caused by undue influence. Such contract remains valid until it is declared void by the court or the aggrieved party remains silence or voluntarily accepts it later on. In such a case, the burden of proof lies on the aggrieved party only to the extent to prove his lower position. the main burden of proof about the non-using of undue influence.

Difference between the coercion and undue influence

Coercion

1. The dominating position of a party over the will of another is not needed. 1s/f/sf] klfx?sf] ljrdf x};otsf] leGgtfsf] dtnj x'b}g. @=o;df k|o ef}lts / lx+;fTds bjfa lbOG5 . #=o;df ef}lts ansf] k|of]un] ha/h:lt ;xdlt lnOG5 . \$=klfx? ;dfg x};otsf] ;DaGwdf /x]sf x'g ;Sb5g, ;DaGw gePsf] kgL x'g ;S5 . % s/sfd t];|f] klf dfkm{t kgL x'g ;s5 . ^ s/sfkhGo sfo{ b]zleq jf afxL/ hxfF kgL x'g ;S5 . & o;n] kmf}hbf/L cfr/0f jf sfo{nfO{ ;fd]n ub{5 . * o;df csf]{ klfsf] lj?4df wDsL lbOPsf] x'g ;Sb5 . (o;df cfkmgf] bfjL k|df]0ft ug]{ ef/ lkl8t klf jf s/f/ ab/ ug{dfu ug]{ klfdf /xG5. !) o;df kmf}hbf/L bfloTj ;d]t ;dfj]z ePsf] x'g ;Sb5 .

2. It involves mostly the use of physical or violent pressure.

3. Consent is destroyed to enter into contract.

4. The parties may or may not be related with each other.

5. Any third party can do coercive act for another.

6. An act of coercion may be committed inside or out side of the country.

7. It includes the criminal conduct.
8. It involves threatens against the person or property.
9. Burden of proof lies on the aggrieved party to prove the consent was not obtained freely.
10. It may impose fine as criminal liability.

Undue Influence 1,s/f/sf] Ps klfdf csf]{ klfsf] OR5fnfO{ bafpg ;Sg] x}l;ot x'g'kb{5 . @ o;df ef}lts / lx+;fTds bjfj x'b}g,s]jn dfgl;s bjfj lbOG5 . # o;df OR5f ljl/t eP klg klfn] cfkm}n] ;xdlb lbPsf] x'G5 . \$ klfx? c;dfg x}l;otsf] ;DaGwdf /x]sf x'G5g, o:tf] ;DaGwdf cg'lrt k|efjsf] nflu clgjfo{ 5 . % cg'lrt k|efj s/f/sf] klfaf6 dfq} x'G5 . ^ cg'lrt k|efjsf] sfo{ b]z leq ePsf] x'g'kb{5 . & o;n] kmf}hbf/L cfr/Of jf sfo{nfO ;fd]n ub}g . * o;df wDsL ;fd]n ePsf] x'Fb}g . (o;df lkl8t klfn] cfkmgf] sdhf]/ cj:yf dfq k|df0ft u/] k'Ub5 afFsL k|df0f sf] ef/ ;an klfdf /xG5 . !) o;df b]jfgL bfloTj dfq ;dfj]z x'G5 .

1. The dominating position of a party over the will of another is needed.
2. It involves moral pressure rather than the use of physical or violent pressure.
3. Consent is induced by improper means to enter into contract.
4. The parties must have relation with each other.
5. Third party is irrelevant. The dominating party exercise his influence.
6. An act of undue influence must be committed inside the country.
7. No criminal conduct is involved.
8. It does not involve threatens against the person or property but uses dominating position to contract.
9. The burden of proof lies on the aggrieved party only to the extent to prove his lower position but the main burden

of proof about the non-use of undue influence lies on the dominant party regarding non-use of undue influence.

10. It imposes only civil liability.

3. Fraud

Fraud means to cheat. a French term fraud means a criminal deception intended to gain money or personal advantage. In other words fraud means a false representation of fact made intentionally or knowingly by a party to another party.

In English law " fraud" was defined in the case of Derry vs.Peek Lord Herschell stated; fraud is proved when it is shown that a false representation has been made, knowingly, or without belief in its truth, or and Recklessly careless whether it be true or false.

sec.14(1) (c) of the NCA, has provided the provision regarding the contract with fraud, intention to deceive others in any form and by any person is known as fraud.

the provision of forged document no.3 of common code of Nepal also provides definition of fraud-where a person prepares a formal document with a view to harm others of any kind by changing date or subject matters of the agreement include under a fraud case.

bkmf !\$! -l;_ s/f/ ug]{ klfn] jf lghsf] k|ltlglwn] csf]{ klf jf lghsf] k|ltlglwnfO{ wf]sflbg] lgotaf6 s'g} s'/f ;Toxf]Og eGg] hfgsf/L x'Fbf x'Fb} ;f] u/]s]f jf s'g} tYosf] af/]df hfgsf/L x'Fbfx'b} ;f] tYonfO{ hfgLhfgL n'sfPsf] jf k|rlnt sfg"g adf]lhd hfn;fhx'g] cGo sfd u/]sf] eP hfn;fh u/]s]f ;Demg'kb{5 . n]lvPafx]s csf{sf] xs d]6g] xbDofb tf/Lv hfg] jf s'g} t/x;Fu gf]S;fg kfg]{ OTofbL h'g;'s} dtan] xf]; gu/] gePsf] em'7f s'/f u/] ePsf] xf] egL jf ldlc^as jf Joxf]/f km/s kf/L ;xL5fk u/L u/fO{ sfuh agfP

sec.17 of ICA Shows the following ingredients necessary for fraud. there should be a suggestion as to a fact.

- the fact suggested should not be true,
- the suggestion should have been made by a person who does not believe it to be true, and

the suggestion should be made with the intention either to deceive or to induce the other party to enter into the contract.

s/f/sf] Ps klfn] jf lghsf] cleftf{n] csf]{ klf jf lghsf] cleftf{nfO{ wf]sf lbg] dg;foaf6 lgDg sfo{ug'{ hfn;fFh x'G5 .s'g} em'7fs'/fnfO{ hfgL hfgL ;Toxf] egL lj>jf; lbnfpg', tYosf] hfgsf/L jf ljZjf; /fVg] JolQmn] tYonfO{ l5kfpg' n'sfpg',kl5 k'/f gug]{ u/L sa'n jf wf]sf lbg] sfd ug'{ / sfg'gn] hfn;fhk"0f{ x'G5 egL 3f]lift u/]sf] s'g} sfo{ ug'{ jf gug'{ .

Essential of fraud.

-the fraudulent act must be committed with an intention to deceive the other party; csf{nfO 7uL ug]{ p2]Zo jf sfo{ ePsf] x'gkb{5

- there must be actual deceive,jf:tljs 7lu gf]S;fgL ePsf] x'g'kb{5 .

-the fraud must be committed by a party of the contract or by his representation; jf:tljs ?kdf tYo ;DalGw j0f{g u/L xfgL k'/ofPsf] x'g'kb{5 .

- There must be false representation;e'm7f] j0f{g x'g'kb{5 .

- Any act declared as fraud by existing law;k]rlnt sfg"gn] hfn;fh 3f]if0ff u/]sf] x'g' kb{5 .

- Losses by one party to next;Ps klfn] csf]{ klfnfO{ xfgL k'/ofPsf] x'g'kb{5 .

- Fraud by party to the contract;

- wrong representation unt s'/f eGg'kb{5 .

- must be related to the fact
- actually acted

Thus, where is dishonesty, recklessness, bad intention to induce others to wrong way, to harm others and having self benefit are the distinct characteristics of fraud. it turns the contract to voidable class.

silence regarding fraud

mere silence is not fraud- doctrine of caveat emptor=buyer beware-ward vs. Hobbs 1878

@= silence is fraudulent

-legal obligation to disclose

-contracts of utmost good faith

-changes in circumstances

-half-truth

-silence is, in itself, equivalent to speech

Effect of fraud

It is also a voidable contract, voidable at the option of aggrieved party. It is a contract, made by obtaining the consent of other party by fraud, comprises the following effect or consequences.

a. legal action need to avoid the contract:-the party who is aggrieved by fraud can take action against the other party to avoid the contract.

b. Acceptance and deemand:- there is double options to the aggrieved party that if such party thinks better can accepts such contract in stead of taking legal action

against it and demand to treat him in the same footing that contract is not made through the fraud. It means aggrieved party may accept the contract as valid contract.

c. Claim of damage:- if the party whose consent was caused by fraud suffers some loss, he can claim damages or sue for damages.

d. Not voidable contract.i.e.if such party does not go to the court within the limitation.

4.MISREPRESENTATION

The term misrepresentation means a misstatement or a false representation of fact made by a party to the contract to another. A misrepresentation is a representation, when wrongly made by a party to the contract to another innocently or without any intention to deceive the other party. Anson- Misrepresentation is a false statement which the person making it honestly believes to be true or which at any rate he does not know to be false. The term misrepresentation means a misstatement or a false representation of fact made by a party to the contract to another. A misrepresentation is a representation, when wrongly made by a party to the contract to another innocently or without any intention to deceive the other party. Anson- Misrepresentation is a false statement which the person making it honestly believes to be true or which at any rate he does not know to be false.

According to section 14 (1) (d) of NCA, Misrepresentation means submission of a false statement on any matter without any reasonable basis of the fact, misleading a party so as to aggrieve him and inducing mistake about the subject matter of the contract.

sec.18 of ICA, Defined the term misrepresentation according to it, there is misrepresentation in these case i. positive assertion ii. Breach of duty and iii. Causing mistake innocently.

the supreme court in the case of Tirtharaj Kumari Rana VS. Ramshanker has decided any contract which has been entered where son and daughter in law sit as witness, cannot presumed to be entered by misrepresentation.

Basic elements of contract by misrepresentation

- object for contract
- by a party of contract
- false state
- representation regarding fact, it may be indirect.
- actually acted

Effect of misrepresentation

Contract caused by misrepresentation is not valid. Such contract is voidable at the option of the party whose consent has been obtained by misrepresentation. Although to avoid or not to avoid the contract caused by misrepresentation depends on the will of the aggrieved party whatever it is, it has following consequences:-

- a. the aggrieved party can avoid or rescind the contract but he is not entitled to compensation.
- b. the aggrieved party can insist upon performance if he thinks fit or aggrieved party may accepts contract if thinks so.

c. although a false representation is made believing it as true, subsequently it comes to be false before the contract is made, the information about it must be given to the other party. If such party is not informed, this amounts to fraud. In this case the victim party is entitled to avoid the contract and claim damages for the loss suffered.

d. In certain situation the aggrieved party neither rescinds the contract nor claim compensation for any loss caused to him if such party remains silence or does not take any legal action against the other party within certain time limitation. He is deprived from both these rights.

e. In the following cases the aggrieved party loses the right to avoid the contract for misrepresentation.

- if such party after being aware about the misrepresentation, takes a benefit under the contract.

- if such party cannot be restored in his original position.

- if an innocent third party has acquired rights in the subjectmatter of the contract.

- if such party does not go to the court within the limitation.

5. Mistake

;fw/0f tof e'n eg]s]f s'g} s'/fdf unt ljZjf; lng'xf] . s'g} vf; ljifosf ;DaGwdf /flvPsf] unt jf e|fds ljZjf;nfO{ e'n elgG5 . s/f/sf nflu k|:tfjsn] h'g cy{ / h'g efjdf k|:tfj /fv]s]f x'G5 k|:tfljt JolQn] kgL ;f]xL cy{ / efjdf ;xdlb lbPsf] x'g'kb{5 b'j} klf e'ndf kg'{kb{5 . Pp6f cy{ / efjdf /fv]s]f k|:tfjnfO{ csf]{ jf leGg efjdf ;DemL ;xdlb bg'nfO{ e'naf6 lbPsf] ;xdlb dflgG5 .o;/L lbPsf] ;xdlb af6 ePsf] s/f/nfO{ e'naf6 ePsf] s/f/ ;Demg' kb{5 . Mistake is 'misconception'. It is a slip which is made not by design but by mischance. The parties of a contract intending to do one thing but does something else, is a mistake. Presence

of mistakes in a contract turns it to void condition. Mistake is a wrong opinion about something. In Nepal nothing is clearly mention regarding the mistake. There is some grounds mention under void contract (sec.13(g) of NCA), though mistake may be defined as an erroneous belief about something. It may be mistake of law or mistake of fact.

a. mistake of law

mistake of law may be-

1. mistake of law of the country-
ignorantia juris non excusat i.e. ignorance of law is no excuse, it is a well settle rule. a party can not be allowed to get any relief on the ground that it had done a particular act in ignorance of law. a mistake of law is therefore, no excuse, and the contract cannot be avoided.(sole vs.Butcher, 1950)

2. Mistake of law of the foreign country-
such a mistake is treated as mistake of fact and the agreement in such case is void.(se.21 of ICA)

b. mistake of fact- mistake of fact may be-

1. Bilateral mistake- a bilateral mistake arises when both parties to a contract are mistake as regards a fact essential to the contract. they may have made a common or identical mistake. common mistake as to the existence of the subject matter, common mistake as to a fact fundamental to the contract and mutual mistake as to the identity of the subject matter. bilateral mistake follows- or forms of mistake;

- regarding existence of subjectmatter *ljifo j:t'sf] dfqf ;DalGw*
- regarding quantity of subjectmatter *ljifo j:t'sf] dfqf ;DalGw*
- regarding quality of subjectmatter *ljifo j:t'sf] u'0f ;DalGw*
- regarding price of subjectmatter *ljifo j:t'sf] d'No ;DalGw*
- regarding identity of subjectmatter *ljifo j:t'sf] lrgf/L ;DalGw*
- regarding title of subjectmatter *ljifo j:t'sf] :jTjflwsf/ ;DalGw*
- Henkel vs.pope 1807 *egL tf/4f/f ;dfrf/ k7fPsf]df 6]nLu|fkm Sns{sf] e'nsf sf/0f send three rifles eGg] vj/ hfG5 krf; j6f /fOkmn k7fpb5 afFsL lkmtf{ hfG5 t/ kl/nllft ?kdf # j6fsf] k};f lbg'kb{5 .*

2. Unilateral mistake *Ps kllfo e"n:-* when in a contract only one of the parties is mistake regarding the subject matter or in expressing or understanding the terms or the legal effect of the agreement, the mistake is a unilateral mistake. According to s.22 of ICA, a contract is not voidable merely because it was caused by one of the party, to it being under a mistake as to a mater of fact.

Effect of mistake

- a. if it a bilateral mistake occurs as to fact essential the contract, then the agreement is void.
- b. if it a unilateral mistake occurs as to the identity of the contracting party, then the agreement is void.
- c. if it a unilateral mistake occurs as to other matters other than above matters, then the agreement is not void.
- d. if the aggrieved party has received any advantage from the other party, then the agreement is not void.

e. A person to whom money has been paid or anything delivered by mistake, such person is bound to repay or return it to the concern person.

s/f/sf] ;f/jfg tYosf] af/]df l4klfLo e'n ePsf] cj:yfdf s/f/ ab/ x'G5

. klfsf] kxLrfg ;DaGwdf Pskllfo e'n ePsf] cj:yfdf s/f/ ab/ x'G5 .

klfsf] kxLrfg s/f/sf] k[s[ltsf ;DaGwdf tyf hfn;fhsf sf/Of Pskllfo e'n ePdf s/f/ ab/ ug{ ;lsg] x'G5 .

pNn]lvt cj:yf afx]ssf] cj:yfdf Pskllfo e'nsf] cwf/df ePsf] s/f/ dfGo x'G5 .

lkl8t Kflfn] csf]{ klfaf6 s'g} nfe jf kmfObf lnO;s]sf eP ;f] lkmtf{ ug'{kb{5 .

s;}n] s;}sf] e'na; s'g} s'/f lbPsf] jf x:tfGqOf u/]s]f eP ;f] lkmtf{ ug'{ kb{5 .

Legality of Object and Consideration (s/f/sf] p2]Zo / k|ltkmnsf] j}Btf

Legality of object and consideration is one of the most important for forming a valid contract. Legality of object and consideration plays a vital role to convert an agreement into a contract. An object means the purpose or design or plan of a contract. The object of a contract is destination of the contracting parties. A contract is based upon the meeting of minds of the competent parties. Object and consideration of an agreement is unlawful and illegal, that can not be enforceable.

Nepalese contract Act, 2056 se.13 has prescribe the contract to void if it has an illegal objective. The sec.13(f) declares the contract, which has the objective against morality or public welfare or public policy, to be void. The se. 13(k) states the contract which has a illegal objective and consideration will be void.

Indian contract Act, 1872 se.10 prescribe all agreements are contracts if they are made for a lawful consideration and with a lawful object.

Here, the contracts which have either illegal or unlawful objective are void. Unlawful means not permitted by law and illegal means prohibited by law.

Importance

An enforceable agreement is a contract. the agreement which is made for a lawful consideration and a with a lawful object, is enforceable by law. The above discussions also prove the inevitability of lawfulness of object and consideration in a contract from the following point of view.

- To protect business from unfair competition and unfair business practice.
- To discourage socially undesirable conduct and inappropriate judicial practices.
- To enforce contract and maintain law and order in business community.
- Not to give an opportunity to carryout illegal acts through the legal agreement.

Unlawful agreement\ contract.

sec. 13(k) of NCA and se.23 of ICA provided that when object and consideration of a contract are unlawful the agreement becomes void. they are,

1. contract forbidden by existing law.se.13(e)

If any object of an agreement is forbidden by law, the agreement of that type of objects becomes void. Generally, the criminal law or other legislative provision forbids something to do or impose duty to do certain acts. If some one breaches such a provision it is void. i.e.chandra s.Rao vs. Kowapatti R.R.M. Rao AIR Mad.579- Infant marriage is illegal.

2.object or consideration defeating the provision of any law(k|rlnt sfg'gdf ePsf] s'/fnfO{ k/flht ug{ vf]lhPsf] s/f/_:- If an object and consideration is of such a nature that it is not clearly forbidden by law but it would defeat the provision of any law, it is also void. i.e. Rama Murthi vs. Goppayya 1917 Mad 701 An agreement is created between a creditor and a debtor. But if it has a term that has the provision not to the plea of limitation as accordance to the law for legal remedy, it becomes void.—xbDofb gfu]k5L kgL s/f/df /sd c;'n pk/ ug{ ;S5f} egL n]lvPsf]df kg Lab/x'G5.

3. Fraudulent object- An agreement of a fraudulent purpose becomes void. An agreement to lend money with a view of fraud is fraudulent act, that is also void.

4.Immoral object or consideration se.13(f) cg}lts s/f/_:- the law doesn't enforce the agreement with an immoral object and consideration. se.13(f) of the NCA has prescribe forbidden the contract with immoral objective. i.e. Gangamma vs. kupammal AIR 1939 Mad,139 prostitution case,and Baiviji vs. Hamda Nagar 1885 Bom. 152 divorce case.

5. Object or consideration injuring to person or property.

If the object or consideration of an agreement is to injure a person or property of another, the agreement is unlawful. In such case the agreement is void. The general term 'injury' means criminal or wrongful harm.

6. object or consideration opposed to public policy se.13(f):- where the object or consideration of an agreement is opposed to public policy, the agreement is unlawful and hence void. So, the agreement concluded against public policy or welfare or interest of public is void. the NCA has also recognized some of such agreement. Generally the following agreements fall within the category of the agreements opposed to public policy. they are;

a. agreement interfering to the parental right.

- b. agreement to transfer or sell the post\title.
- c. agreement interfering with administration of justice.
- d. agreement to restraint to trade.
- e. agreement relating to marriage brokerage.
- f. agreement to relating creating monopoly.
- g. agreement restraining to personal freedom of anyone.
- h. agreement of trading with alien enemy,
- i. agreement in restraint of marriage.
- j. agreement in restraint of personal liberty.

Effect of unlawful agreements

se.13 has provided void agreements and se.14 has provided voidable agreements. the agreement, which has an unlawful objective and consideration creates mainly three types of consequences-

- agreement become void,
- agreements become voidable, and
- agreement make the contracting parties deserving punishment.

Contingent contracts

Sec.12 of NCA

The word 'contingent ' means uncertain or accidental. It is conditional nurture. Such a contract depends on a future uncertain event or a contingent event. In Nepal the concept of contingent contract is a new one introduced by NCA, 2056 sec.12 provided definition on the perspective of the rules regarding a contingent contract. A contract is concluded for performing or not performing any work, if any event happens in the future, the contract that does not create any liability until such an event happens, is a contingent contract.

se. 31 of the ICA has clearly defined the term contingent contract- A contingent contract is a contract to do or not to do some thing if some events, collateral to such contract does or does not happen.

The above definition clarifies that 'contingent means conditional and the condition is of ' uncertain nature' and it means a future event. That must be collateral to contract.

A contract to pay a sum of money on expiry of a time or the death of person is not a contingent contract because these events are of a certain nature. The time or the person in question will definitely expire and the money will become payable.

When the condition is of uncertain nature, then only the contract can be regarded as truly contingent. Example- a contract to pay a sum of money on the destruction of a house by fire is a contingent contract, for that contingency may or may not happen. From this point of view, all contract of insurance, are contingent contracts. Ordinarily contingent contract will contemplate a future event.

Rules regarding contingent contract.

1. Happening of an uncertain future event (sec.12(1)):- contingent contracts dependent on the happening of an uncertain future event cannot be enforced until the event has happened. if the event becomes impossible, such contract becomes void. i.e. A contracts to pay B a sum of money when B married C. IF C dies without being married to B the contract becomes void.
2. Nonhappening of an uncertain future event [se.12(3)]:- where a contingent contract is to be performed if a particular event does not happen, its performance can be enforced when the happening of that event becomes impossible. i.e. A agrees to pay B Rs.10000/- if an aircraft does not return. The aircraft meet with an accident. The contract can be enforced when an accident happens.
3. Happening of an uncertain event within specified time[se.12(4)]:- contingent contracts to do or not to do anything, if a specified uncertain event happens within a fixed time, become void if the event does not happen or its happening becomes impossible before the expiry of that time. i.e. bibek promise to pay samikchaya Rs.2000/- if a certain ship returns within a year. the contract may be enforced if the ship returns within the year, and becomes void if the ship is burnt within the year.
4. Nonhappening of an uncertain event within specified time[se.12(5)]
5. Agreement contingent on impossible event is void:- contingent agreements to do or not to do anything if an impossible event happens, are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made. i.e. A agrees to pay B Rs.100 if B will marry A's daughters, C. C was dead at the time of the agreement the agreement is void.

Features of a contingent contract.

- there must be a contract to do or not to do something,
- the performance of contract must be dependent upon the happening or non-happening of a uncertain event in future,
- the event must be possible but of uncertain nature, and
- the event must be collateral to the subject matter of the contract.

Distinction between contingent contract and wagering contract.

wagering contract.

1. It is an agreement that may be against the public welfare.- of] ;fj{hlgs lglt / ;befj lj?b x'G5_
2. It has no legal ground-o;df s'g} sfg"gL cfwf/ x'Gg_
3. Not obligatory by the law- sfg'gsf] s'g} bfloTj /xGg_
4. to win is the purpose of parties _xf/lhtsf] p4]Zodfq /xG5_
5. time is short- ;do 5f]6f] x'G5_
6. No performance-kl/kfngf x'Gg_
7. To promise two parties-b'O klfsf] sa'n x'G5_

Contingent contract

- 1.it is a contract that may not be against public welfare-;fj{hlgs ;bfrf/ tyf lglt lj?4 x'Gg_
- 2.it is lawful, and enforceable by law-of] sfg"g ;Ddt tyf sfg'g 4f/f sfof{Gjog x'G5_
3. Based on legal obligation.
- 4.to longtime.
5. no matters of gain or loss.
6. it is contract that both the parties object to its performance,
7. except wining or losing.

Performance of contract

s/f/sf] kl/kfngf

The term 'performance' means to fulfill or execute something or fulfillment of obligations created in a contract by the contracting parties. A contract must be possible to perform, otherwise it becomes void when a contract is duly performed by all of the contracting parties, it comes to an end in an easy and natural way.

The general rule is that performance of a contract must be precise and exact. That is a party performing an obligation under a contract must perform that obligation exactly within the time frame set by the contract and exactly to the standard require by the contract.

The party is said to have performed its obligations when nothing is left for to do. The party that has performed its obligations is entitled to a legal remedy against the defaults because fulfilling one's liability means acquiring rights. A contract comes to an end any way, but expects that it will be a happy ending, which is possible only discharge when the purpose of the parties. The contract automatically discharges, when the purpose of the contract is fulfilled by the performance of its parties. That may be called a happy ending of the contract.(Bhairav Prasad vs. Chitawan irrigation project NKP 2046 p.344) if it ends up without a performance, it is not happy ending of the contract.Sec.74 of NCA, state that-'every party to a contract must fulfill his obligation under the contract.' This section clearly shows that parties are bound to perform the contract. All the parties of a contract have to fulfill their respective obligations. No one can escape from liability. i.e. Tirthakumary case.

performance of contract is important because of following things;

- to maintain law and order.
- to create the healthy legal environment.
- to develop business efficiency.
- to maintain a good business relations.
- to the very existence of the contract.

Types of performance of contract.

Generally, there are three types of performance;

1. Actual performance:- where the liabilities are performed actually by the parties to a contract there is the actual performance. Actual performance brings the contract into an end naturally.
2. Partial performance:- it may happen that an individual only partially performs his side of the contract yet nevertheless the other party, rather than reject the work, decides to accept the work that has actually been done. Partially, partial performance always amount to breach of contract if the other party does not accept it. Ore Supreme Court in **pradip kedia v. ministry of forest** has recognized partial performance.
3. Attempted performance-sf]lz; o'Qm kl/kfngf-s/f/ cg';f/sf] sfo{ u5{' eg]/ ;f] ug{ vf]Hg' g} ===xf] _:- Where the promisor is ready and willing to perform his promise and offers the same, but promises refuses to accept it, there is attempted performance or offer to perform. it is regarded equivalent to performance of contract.

Rules Regarding the performance of a contract.

1. The promise party-s/f/df kl/x]sf] sa'nu|xLt_:-

Only the person to whom the promise was made has the right to ask for performance. other persons can not ask whether they are indirectly related to the benefit from such a performance of the contract. se.78(1) of NCA, has mentioned the promise who is a person to whom a promise is made is entitled to demand the performance of the contract. The leading case is T.G. Vankataraman vs. State of Madras, AIR 1970 Indian Supreme Court held that a person cannot acquire right under a contract to which he\she is not a party.-s/f/sf] kl gePsf] JolQmn] s/f/sf] kl/kfngfsf] dfu ug{ ;Sb}g_

2. Attempted performance or tender of performance-kl/kfngfsf] sf]lz; jf kl/kfngfsf] cfx\jfg_- sometimes the promisor offers to perform his\her obligation at the proper time and place in accordance with the contract but the promise does not accept it. Such a type of act of the promisor party is known as a tender or attempted performance. In this circumstance the tender is regarded as equivalent to the actual performance and he is entitled to a legal remedy against the promise. *Condition of tender of performance of contract:-*

-it must be unconditional-kl:tfj zt{ /xLt x'g'kb{5.

-it must be made at a proper time and place-kl:tfj tf]lsPsf] :yfg / ;dodf /flvPsf] x'g'kb{5_

-the tender must be of whole obligation;-Dk'Of{ pQ/bfloTjsf] nflu x'g'kb{5_

-the tender must be made to a proper person- h;sf] ;dlf /fVg'kg]{ xf] p;} ;dlf /fv]s]f x'g'kb{5_

person to perform or execute the contract

se. 74 of NCA, mention that every party who enter into contract must perform the contract. s.77 mention about the person who are bound to perform the contract as follows:

- a. promisor himself (se.77(1):- except when the contract must be executed by the person concluding it, he may execute it through his agent, representative or any other person.
- b. by the third person(77(2):- if a contracting party once accepts the work done by the third person, he cannot later on demand that the work must be done by the contracting party himself.
- c. by joint promisor (se.77(3):- except otherwise mentioned in the contract, if in case two or more than two person have jointly signed a contract with any other party, all or any of the party jointly signing the contract must fulfill the obligation under the contract.
- d. by legal heirs or legal representation se.76:- if the promisor dies or become insane before fulfilling his part of the obligation under the contract, his part of the obligation will devolve upon his legal heirs. However, the legal heirs liability is limited up to the extent of property received by him from the deceased. Nevertheless, the contracts, which involve the exercise of a personal skill or qualification of the promisor (for example a contract to sing), will never devolve to his legal heir.

Place of performance of contract: - place is of vital importance to perform or to fulfill the contract. se. 72 of the NCA, mentions about this;

1. **At the specific place:** if any place has been specified for the performance of the contract then it should be done accordingly.(72(1))
2. **At the place where the goods are stored:-** if one party is to hand over the goods to the other and the place has not been mentioned, then the goods are to be handed over from the place where they are stored.(72(2))
3. **At the particular place:-** if the particular place is not mentioned and identified for the performance of the contract, but according to the nature of the work and the general practice and custom it can be done at the particular place, the contract shall be deemed to have been concluded with a provision to perform the work at the particular place accordingly.se.72(3)
4. **At the reasonable and appropriate place:** If the place of performance is not mentioned, except in the circumstances mentioned above, the performing party has to request the other party to specify the reasonable and appropriate place. Upon such request, the other party also has to specify the reasonable and the appropriate place.72 (4)

When and where to perform

NCA, Se.71 and ICA, Se.40-50

- a. in case fixed time and mode;-do / tl/sf pNn]v ePdf_:- where a time is prescribed in the contract, the performance of the contract must be within and at the time of the contract. se.71(1) NCA
- b. In case the particular time and mode-vf; ;do P+j vf; tl/sf pNn]v u/]s]f ePdf_:- where time is not prescribed, the performance may be made at a particular time, if a particular time is applicable. se.71(2)
- c. in case of reasonable times and mode-dgfl;j ;do / tl/sf pNn]v u/]sf] s/f/ ePdf_:-where time is not prescribed in the contract, it has to be done at reasonable time. the reasonable time is determined by the nature of the particular contract, usage of business and intention of the parties entering into the contract.se.71(3)

Contract need not be performed (se.73 a , to e)

- In case of relief
- in case of voidable contract
- in case of breach
- in case of application of any provision
- in case of subsequent occurrence of the circumstances.

Termination of contract

The word 'termination' means bringing to an 'end' or 'termination' refers to the end of something. Similarly, the termination or discharge of a contract means discontinuation of the contractual relationship between the parties. It means the contract can be terminated when contracting parties become free from their task or legal obligations arising from a contract. A contract is said to be terminated or discharged when it ceases to operate, i.e. when the rights and obligations created by it come to an end. This is known as 'discharge of a contract' such rules of contract are scattered over many sections of the Contract Act, 2056. A contract can terminate in any one of the following circumstances.

1. **Termination by performance: se.74-** performance of a promise by all the contracting parties to a contract is one of the most usual easy and natural ways of termination of a contract. Every party to a contract must fulfill his obligation under the contract. If only one party of a contract performs his/her liability, he alone is discharged and acquires the rights against the other parties who do not perform.
2. **Termination of contract by mutual agreement of parties:-** the contracting parties may come to an understanding to end the contract. As stated in se.62 and 63 of ICA, Original contract is terminated by the way of novation, alteration, rescission etc. se.81 of NCA, has also provisioned that the original contract can get terminated by alteration, suspension and like. In general termination of a contract by agreement may occur in the following ways;
 - a. **Novation –gljs/Of4f/f_:** Novation means the substitution of a new contract in the place of the old one. Such a new contract may be held either between the same parties or different parties. In such case, the old contract is revoked and substituted by a new one. Thus a party is discharged from the contractual liability by novation. *Full bench of SC OF Nepal in one case has said that where there are two transactions between the same parties and nothing is mentioned about the previous transaction between the same parties, it will be presumed that the parties have settled the previous transaction and it will have no effect.*
 - b. **Alteration by party-klf4f/f x]/km]/_:-** alteration of a contract may take place when one or more of the terms of the contract is/are altered by the mutual consent of the parties to the contract. In such a case, the old contract is discharged.

c. Rescission\ repealing- a contract may be rescinded(repealed) by agreement between the parties at any time before it is discharged by performance or in some other way.

d. waiver:-waiver takes place when the parties to a contract agree that they shall no longer be bound by the contract. This amounts to a mutual abandonment of rights by both of the parties to the contract. Consideration is not necessary for waiver. Here total right is abandoned and not the partial.

e. remission-remission means acceptance of a lesser fulfillment of the promise made, eg- acceptance of a lesser sum than what was contracted for. Where the lesser sum is actually paid or lesser obligation actually performed and accepted by the promise, in such case the old contract is discharged by accord and satisfaction.

f. merger:- generally, merger means coming of two rights in the same place. When a superior right and an inferior right coincide and meet in one and the same person, the inferior right vanishes into the superior right. This is known as merger.

3. termination of contract by impossibility of performance- Impossibility of performance turns the contract to termination. Sometimes, the impossibility of performance may remain unknown to the concerned parties at the time of concluding the contract. It may arise subsequently after the creation of the contract. The contract cannot be operated by the law, if it is subsequently impossible to perform, it becomes automatically, void. This rule based on a maxim-impossibilium nulla obligat. Denotes what is impossible doesn't create legal obligation. The termination of a contract due to the cause of the doctrine of subsequent impossibility is equal to the doctrine of frustration of English law i.e. A agrees to pay Rs.10,000/- to B and B promises to bring a star from the sky. The agreement is void ab initio.

4. Termination of contract by lapse of time:- if the parties have agreed upon a contract for the fixed period, then the contract is discharged after expiry of such stipulated time(it does not matter whether the work is completed or not). In the contract, no remedy can be claimed if the injured party does not sue within the time permitted by section 89 of the NCA. Likewise Nepal arbitration Act, 2055 has provided 120 days for the settlement of the dispute from the date of reference.

5. Termination by operation of law:- some times a law itself becomes influenced by some incidents and the law is activated. It can be a cause of the termination of contract. The following cases are those in which a law becomes active.

a. by merger b. by death of the promisor c. by insolvency of party and e. by material alteration of main point of contract.

6. Termination by breach of contract:- a breach of contract occurs when a party there to renounces his liability under it or by his own act makes it impossible or totally or partially fails to perform such obligations. Breach of contract means breaking of the obligation, which a contract imposes.

7. Termination by supervening impossibility.

-out of capacity of the parties,

-doctrine of supervening or subsequent impossibility-

-impossibility of performance-c;defJo_

-doctrine of frustration-xtf;sf] l;4fGt_

-Force majeure -b}jL ljkgsf] l;4fGt

The doctrine of supervening impossibility is based on the maxim 'lex non cogit ad impossibilia'. It means doesn't compel the impossible. Anson- a change of circumstance renders the contract legally or physically impossible of performance, such a situation is provided for by the doctrine.

In England, the doctrine of frustration is the parallel concept of supervening impossibility.

Indian contract Act, 1872 has given space to this doctrine under se.56. According to se.56- a contract to do or not do an act which after formation of the contract becomes impossible or by reason of some event, becomes void, when the act becomes impossible or unlawful. The NCA has also adopted this doctrine as fundamental change in circumstances. Se. 79(1) of the NCA, where it becomes impossible to execute a contract due to fundamental change in the circumstances prevailing at the time of contract, the parties need not perform the work under the contract.

only by the middle of the 19th century this doctrine developed in the history of contract law. Before, it for a long time the doctrine of absolute performance gave no room to the parties to be free from contractual liability except in case of personal qualification related contract by reason of impossibility arose from the circumstance of future. With the pace time the concept to grant freedom to the party from contractual liability began to emerge. And for the first time the high court of England recognized this doctrine in the case of Taylor vs. Caldwell in 1873.

According to se.78 of NCA, there should be fundamental change in the situation and because of that change performance of the contract becomes impossible. supreme court in one case held that 'contractual obligation need not be fulfilled when there is fundamental change in the situation.' (manju kumari gyawali v. tilak raj thapa 2066)

Cases where DOSI Applies(cfsf;ds c;DefJotfsf] l;4fGt cfsfif{t x'g] cj:yfx?_

1. Destruction of subject matter se.78(2) c :- If the subject matter of a contract is destroyed without any fault of the parties, the contract terminate i.e. Caldwell let a music hall to Taylor for a series of concert on certain days. The hall was accidentally burnt down before the date of the first concert. Held the contract was void. (Taylor v. Caldwell 1863)
2. change of law se.78(2) a:- A subsequent change in law may make the contract illegal and the contract terminates.
3. death or incapacity of party se.79(d):- it is impossible to perform the contract of which the promisor is dead or becomes incapable of performing it. Such a cause of termination often happens in the contract based on personal skills and qualification. i.e. A' a singer agrees to sing a song in a program on a certain date. But he becomes unable to sing due to throat cancer before the due date. The contract is terminates.
4. Declaration of war and Natural calamities se.79(b) o'4 of k|fs[lts ljklt ePdf_- a contract between alien enemies becomes void after the break out of war. where parties of two countries enter into a contract before the declaration of

war, it is impossible to perform the contract. such contract is either suspended during the war time or terminated.

Case where DOSI does not apply.

This case is also termed as exception to the doctrine of supervening impossibility. The NCA has also mentioned some of these exceptions, so the case where doctrine of the supervening impossibility does not apply is as follows.

1. Difficulty of performance se.79 3 a:-kl/kfngf ug{ sl7g ePdf a contract is not terminated due to the fact that the performance is unexpectedly difficult, expensive, burdensome or less profitable than anticipated.
2. commercial impossibility se.79(3) b Jofkfl/s c;DefJotf ePdf:- physical or legal impossibility is excusable to avoid performance but a commercial impossibility like the one caused by a greater cost or a lesser profit is never excused.
3. default by a third party t];f] klfsf] uNtL eof] eg]/ se.79(3) c :- it is not an excusable cause to terminate the contract or discharge the default party. a person is not discharged, when his failure of performance of his promise is caused by his arrest or concentration for a crime.
4. strikes, lockouts and disturbances x8tfn, tfnfaGbL ePdf se.79(3)d:- except otherwise is mentioned in the conditions of a contract, strikes, lockouts, or civil disturbances do not constitute an adequate cause to excuse the party who does not perform his liability.
5. additional tax, revenue etc.cltl/St s/ jf /fhZj yk eof] eg]/ se.79(3)e:- a contract is not discharged on the ground of additional tax or fee or revenue. so, if it becomes necessary to pay additional taxes, fees or other revenue to the gov. as prescribe . the contract is not deemed to be impossible and such event doesn't discharge the contract from performance.
6. failure of any of the object p4]Zo k'/f ePg eg]/ se.79(3)f:- if a contract is made for several objects, the contract is not discharged on the ground of failure of one of them. Therefore, a contract made with more than one objects does not get terminated due to failure of one of the objects.

Effects by supervening impossibility upon contract cfsI:ds c;DefJotfsf] l:yln] s/f/df kfg]{ k|efj se.79(4):- when it subsequently becomes impossible to perform the contract after its formation, the contract becomes void. NCA Se. 78(4) when the contract becomes void on the ground of Supervening impossibility, the benefits received there under has the following effects-

1. amount must be refund /sd lkmtf{ ug'{kb}{5.
2. amount may not be paid /sd e'StfgLg} ug'{kb}{g
3. claim as reasonable amount dgfl;j dfkmLssf] /sd e/fO{ lng kfpg]

Breach of contract

A breach means to an act of breaking a rule or an agreement. A breach of contract means a non-performance of the contract. A breach is just opposite to performance. If a contract is broken by one party the other party becomes victimized.

se.82 (1) of the NCA mentioned that if a party to a contract fails to fulfill his contractual obligation under the contract, or gives information to the other party that he will not perform the work as mentioned in the contract, or if his actions and conduct show that he is incapable of performing the work as mentioned in the contract, he is deemed to have broken the contract.

A breach of contract includes the following elements.

a.if the party fails to fulfill obligations under the contract, or s/f/adf]lhdsf] bfloTj k'/f gu/]df jf

b.if the party gives information to the other party that he will not perform the work as mentioned in the contract, or s/f/adf]lhd cfkm'n] ug'{kg]{ sfd gug]{ ePsf] s'/fsf] ;"rgf csf]{ klfnfO{ lbPdf jf

c. if by action and conduct the party seems to be incapable of performing the work as mentioned in the contract.

Types of breach of contract

The breach of contract may be of following two types, they are

a. Actual breach of contract :- when one of the parties to a contract does not perform his obligation under the contract when due, it is called an actual breach. Such a refusal may be either express or implied. The actual breach of contract may happen in any of the followings,

1. during the course of performance :- if one party fails or refuses to perform or by his actions and conduct he seems to be incapable of performing his obligation at the time fixed for performance, it is called an actual breach of contract on due date of performance.

2. on due date of performance :- in case where one party has performed a part of his obligation but fails or refuses to perform the remaining part of obligation under the contract, it is called an actual breach of contract on the due date of performance.

b. Anticipatory\ constructive breach of contract :- an anticipatory breach of contract is such a breach, which takes place before the time fixed for performance. if the time for performance of the contract is fixed for performance of the contract is fixed in the contract and one party repudiates his obligation or gives pre-information to the other party that he will not perform his obligation before the time for performance arrives, it is said to be an anticipatory breach of contract. It is also termed as a constructive breach of contract.

An anticipatory breach of contract may happen in any of the following ways;

a, by renunciation b. by creating some impossible

Remedies for breach of contract.

The term remedy can be understood as a legal treatment provided by the court of law or other formal agency performed under law to the injured party as per his/her demand. A remedy is the courses of action which are available to an aggrieved party for contract. As per the nature of breach of the contract, the different kinds of remedy may be available to the aggrieved party. But the purpose of each remedy is different. The aggrieved party may claim one or more than one remedies. The remedies, which are enforced by the court, of law are as follows. (se.82-87 of NCA)

1. **Specific performance se.86 (1-2)** the contracting parties are bound by obligations created by the contract. Specific performance means an order by the court upon the party breaching the contract directing him to perform the obligation as agreed upon previously. when any party breaches a contract the injured party may demand a specific performance by suit. in the following cases, the aggrieved party can demand the specific performance. (86 (1) of NCA)

a. when the act agreed to be done is such that the amount of compensation received for its non-performance is not adequate ,or

b. when there exists no standard for ascertaining the actual loss caused by the non-performance of the act agreed to be done, or

c. when it is probable that the amount of compensation cannot be received for the non-performance of the act agreed to be done.

There are some exceptions to the general rule. So in certain cases, as started in se.86 (2) of NCA the aggrieved party cannot demand the specific performance.

They are as follows;

- a. where the amount of compensation received for the non-performance of the contract is adequate, or
- b. where the contract is based on personal expertise, skills, or knowledge, i.e. a contract to painting. or
- c. where the court cannot regularly supervise its carrying out e.g. building contract or
- d. where the situation is such that the contract cannot be executed as stipulated, i.e. the subject matter is destroyed or
- e. where the party breaking the contract himself demands to execute the contract as stipulated.

Thus specific performance is an equitable remedy given by the court to enforce against a defendant the duty of doing what he agreed by contract to do, a plaintiff may therefore obtain judgment for specific performance although there has not in the strict sense been any default by the defendant before the issue of the writ. The Supreme Court Nepal has endorsed the rights of aggrieved party to avail specific performance in the contract relating to the transfer of immovable property such as land, house etc. by deciding the case of tirthakumari Rana vs. Ram shankar shrestha NKP 2049 and kanchho kami vs sharkikami etc. Generally court grants specific performance in the contract relating to immovable property, rare goods etc.

2. **Injunction\ right to sue for injunction (lgif]wf1fsf] d'4f rnfpg] clwsf/_**
se.87(1-2);- it means 'to stop doing something'. Injunction is also one of the legal remedies for an injured party. Injunction is also an equitable remedy which is a preventive relief. Injunction is a court order that restrains the breacher party from doing wrong or continuing the wrongful act, complained. Such an order is usually granted by the court, to enforce negative stipulations in the case where the damage can not be an adequate relief for the injuring party. Such a remedy is appropriate where there is an anticipatory breach of contract.

In connection with injunction, the NCA has mentioned the following provisions. They are as follows,

a. if it becomes impossible to perform the contract because any other party is about to take any action or behavior contrary to the nature of the contract, the party aggrieved by such action or behavior may file a complaint with the court of appeal to stop such action or behavior.

b. if the complaint is filed, the court of appeal may issue an appropriate order to the other party to immediately stop such action or behaviour.

c. if the aggrieved party suffers an additional loss or damage because of the failure of the other party to comply with the order so issued, he may also claim for compensation for such loss or damage.

3. Right to claim quantum meruit (dgfl;j /sd e/fOkfpg] clwsf/_;- The latin phrase quantum meruit means payment in proportion to the amount of work done. In other words as much as merited. The right to quantum meruit means a right to claim the compensation for the work already done or for the service already rendered. An injured party entitled to sue for quantum meruit, when a contract partly performed by one party has become discharged by the breach of another party. such a type of remedy is based on the implied agreement to payment for what has been done or completed. but it is not based on the original contract, because it is void. Quantum meruit principle is applicable in the following circumstances;

a. contract must be breached se.83(2)s/f/ e+u ePsf]x'g' kb{5

b. Act must be non-gratuitous se.85 ; ;'Ns sfo{ ePsf] x'g'kb{5

c. contract must be void se.65 of ICA

d. contract must not be partial or indivisible s/f/sf] cf+lzs sfo{ ePsf] x'g'x'b}g

e. promise of contract must be express or implied s/f/df ePsf] sa'n JoSt jf cJoSt x'g'kb{5

f. person may not be guilty klfsf] cfkmg} bf]if ePsf] x'g'x'b}g.

g. where a remuneration or compensation is not prescribed in the contract, a reasonable payment should be paid.

4. Right to claim Damages\compensation (lfltk'lt dfu ug]{ clwsf/_

Damage is a financial compensation, awarded by the court for the loss of injured party, which can be calculated. In contract law, damage means the monetary compensation provided to the aggrieved party by considering his loss or damage caused by the breach of contract. To pay the damage is just to pay some money for the purpose of his recovery or monetary compensation. the main objective of damage in the law of contract is not to punish the guilty party. NCA se.83(1,2,3) has provided three types of damages as remedies for the injured party. An injured party can recover the following losses from the breacher party;

1. actual loss se.83(1)

2. amount of compensation if mentioned\claim certain amount as contract s/f/df pNn]lvt lglZrt /sd e/fO{ kfpg]

3. cannot claim indirect or hypothetical amount ck|Tolf of sfNklgs /sd e/fO{ lng kfpg}g .

5. Right to rescind the contract s/f/ vf/]h ug]{ clwsf/ se.82(2);- Rescind or rescission means the cancellation or revocation of a contract. When a party breaches a contract, the other party may go to the court to treat the contract as rescinded and refuse further performance. i.e. A agrees to supply 100 tons of sugar to B on April 10, and B promise to pay for the goods after its receipt. A doesn't supply the goods on the due date. Here, B IS discharged from the liability of paying the price.

Quasi- contract

A quasi contract is a contract in the eyes of law. it is based on the latin maxim 'nemo debet locuplatari ex liena justua' which means no one must grow rich out of

another's cost\ expense' h;sf] cy{ sf]xL kgL c?sf] nfut jf vr{af6 wgL aGg kfpFb]g eGg] xf] . It is based on the principle of equity that no person shall be allowed to unjustly enrich himself at the expense of another. Generally, contract are created by an agreement between two or more than two parties. the agreement, which fulfils certain essential elements, is called a contract. But certain cases create a contract without any essential elements of a valid contract; it is called a quasi contract.

A quasi contract is not created by the meeting of mind or consensus of the parties. it comes into existence when one of the parties act activities the law. In such a contract, there is no offer and acceptance, no free consent, no intention to create a legal relationship and no intention of the parties to enter into a contract. Therefore, quasi contract is not a contract in the strict sense. The law of quasi contract is also known as the law of restitution. A quasi contract is therefore, called an implied contract and also termed as constructive contract under English law. the Indian contract act terms quasi contract as certain relations resembling those created by law. similarly NCA has named as an indirect contract according to se.11.se.11 of NCA has mentioned the notwithstanding anything contained elsewhere in this act, a contract shall be deemed to have been concluded in the certain circumstances. such a contract is based on the doctrine unjust enrichment and it is equitable relief.

Rules regarding Quasi-contract

1. Maintain the Basic needs(cfwf/ e't cfj:ostfsf] Joj:y fug{ se.11 a:- A supplier of necessities to an incapable person has a right to claim for a reasonable price for the goods supplied or services provide. i.e. a minor or lunatic agreement makes them liable to pay a reasonable price for the goods supplied to fulfill their necessities.
2. payment by a related person ;/f]sf/ jfnfn] lt/]sf] /sd se.11 b:-If a person is interested to pay what another is bound by law to pay and who therefore pays it , it is entitled to be reimbursed lkmf{lbq' by the other. i.e. A the landlord, has to pay tax to the government B the tenant has paid for that to save the property. the payment is to be reimbursed by the landlord.(Tulsa kunwar vs. jageshar Prasad 1906)
3. payment of remuneration for any act s'g)kgL sfdsf] kfl/>lds lbq' se.11 c:- where a person has given something to another or has ordered for some job given free, the price of the goods or remuneration for the service is to be paid by the person who has received it.
4. goods must be keep as bail by finder dfn kfpg] Joltmn] gf;f] ;/x /fVg'kg]{ se.11d:- where a person possesses any property of another lawfully, he should keep that property as a bailment. in the same way, a finder of the lost goods of another person also has to fulfill his duty as a bailee. i.e. A the owner of a motorbike, transfers it to B's workshop for the purpose of servicing . B as a baille has to take care of this bike until A doesn't come with the payment of service.
5. refund if payment by mistake e'nn] lbPsf] /sd lkmf{ ug'{kg]{ se.11 e:- where a person gives a sum of money by mistake or under coercion to another, the receiver has to return the sum to the giver. such a liability also comes under a quasi contract. this rule is based on the principle of ownership. i.e. if a certain

amount of sales tax is paid to the office by a business firm by mistake it is mistake of law as well as mistake of fact. the tax amount is to be returned to the business firm by the tax office. (sales tax officer, banaras vs. kanhiya lal Mukunda lal saraf AIR 1965 SC 13)

Contract of agency

It is not possible for a businessman to transact all his business himself due to the complexities of modern business. He has to be dependent on the services of other persons in order to run his day to day business activities. At the very beginning, businessperson carried on business activities themselves. But this concept has been changed at present time. Today, business activities are becoming very complex and very wide on the one side and businesspersons are becoming very busy on the other side. Businessperson has become impossible for an individual to carry on business activities on individual scale. Because of this, businessman has started to employ another person as representative competent to handle business transaction with third person on their behalf. A person employing another is called the principal and a person to be employed is called the agent.

A contract creating relationship of principal and agent is agency or a contract of agency. A contract of agency is one that creates a legal relationship between the principal and an agent. the person who has been delegated the authority to act on behalf of another is called an agent and the person who authorize another carryout some responsibility is called a principal.

The matter of contract of agency is governed by commercial agent's regulation, 1993 in England. Indian contract act 1872 in India and Nepal agency act 2014, Nepal agency regulation, 2019 and contract act 2056 in Nepal.

se. 2 (a) of Nepal agency act, 2014 has provided that an agent is one who works for any domestic or foreign business firm all over Nepal or any part of the //Nepal and the term agent may mean a distributor, stockiest, nominee or a representative. Ph]G6 eGgfn] g]kfnel/ jf To;sf] s'g} Onfsfsf] lgldt :jb]zL jf ljb]zL kmd{sf] Ph]G;LIng] JoQmL ;Demg' kb{5 / ;f] ;Jbn] l8il6Jo'6/, :6ls:6 gf]ldlg jf l/lk[h]G6]l6e eO{sfdug]{ JolQm ;d]tnfO{ hgfpFb5 .

se.56 of NCA has defined the term contract of agency as ' every person appoints any other person as his representative to do anything on his behalf except the subject concerned with his personal skill, or to conduct business or any transaction with a third person on his behalf or to represent himself to such person or to establish legal relations with principal person and a third person and

in this way, it is deemed to have been concluded the contract of agency. 's'g} JolQmn] cfkmgf] JolQmut blftfl;t ;DalGwt ljifodf afx]s cfkmgf] cfkmgf] tkm{af6 s'g}sfd ug{ jf k|ltglw eO{ Joj;fo ;~rfng ug{ jf t];|f] JolQm ;Fu s'g} sf/f]af/ ug{ jf To:tf] JolQm;dlf cfkmgf] k|ltglwTj ug{ jf k|ltglw lgo"Q mug}{ JolQm -d'Vo JolQm_ / t];|f] JolQmlar s'g} lsl;dsf] sfg"gL ;DaGw :yflkt ug{ s;}nfO{ k|ltglw lgo"Q mug{ ;Sg]5 / o;/L k|ltglw lgo"Qm ePsf]df Ph]G;L ;DalGw s/f/ ePsf] dflgg] 5 .

Similarly, se. 182 of ICA has provided that ' a contract by which a person employs person to do any act for himself or to represent him in dealing with third persons, is a contract of agency.h'g s/f/ cg';f/ Ps Joltmn] cfkmgf] cflu s'g} sfd ug{ jf t];|f] Joltmx?;Fusf] sf/f]af/df cfkmgf] k|ltglwTj u/fpg csf]{ JoltmnfO{ lgo"Qm u5{, Tof] cles/Of ;DalGw s/f/xf] .

the law of agency is based on the two principals, they are;

-what ever a person can lawfully do himself, he may also do the some through an agent.hltso{ sfg'GfL ?kdf Pp6f JolQmn] ug{ ;S5 Tolt s'/f lghn] cfkmgf] k|ltglw dfkm{t kg Lug{ ;S5 .

-he who acts through another is considered to have acted personally.h'g JolQmn] c? dfkm{t sfd ub{5 lghn] JolQmut ?kdf u/] ;/x dflgG5.

Features of a contract of agency

- consideration is not necessary in a contract of agency.
- a contract of agency is based on good faith,
- contractual capacity,
- the principal is responsible for the act done by the agent.
- principal appoints the agent.
- the agent is appointed either expressly or implied,
- delegation of authority.
- consideration.

i. Establish legal relationship between the principal and the third party.

Who is a principal- the person who employs an agent in dealing with third person is called a principal.

Who is an agent- the person who is employed with some powers to act on behalf of the principal dealing with the third person is called an agent.

Modes of creating agency Ph]G;L v8fug]{ tl/sf

The relationship between the principal and an agent is called an agency. An agency may be created legally in any one of the following modes;

1. Agency by express agreement JoQm jf k|Tolf cles/Of- an agency may be created either by an expressed or an implied agreement. An agency is created by an express or implied agreement which may be either written or oral. it is the most usual and natural way to appoint a agent, by executing the formal power of attorney in a written, stamped and signed document. In Nepal agency must be created in a written form. An agent can be appointed only after having application submitted in the department of commerce of GON and getting it registered. The scope of the power of attorney may be different, so it may be subdivided into the following classes;

- general power of attorney ;fdfGo clwsf/ kq
- special power of attorney ljz]if clwsf/ kq
- particular power of attorney vf; clwsf/kq

2. implied agency kl/nllft jf ck|Tolf cles/Of- an agent may be created by an implied agreement. It happens under certain circumstances from the behavioral conduct of the parties or the relationship between them. For examples- a son was allowed by his mother to drive a car for her paying all expenses of maintenance and operation. The son caused an accident injuring his wife. It was held that the son was an implied agent of the mother and the wife could sue the mother for the fault of her agent. (Smith vs. Moss 1940) agencies created under implied authority or agreement are of the following three kinds.

- a. agency by estoppel\words arg 4f/f ePsf] cles/Of
- b. agency created by holding out cleo4f/ Ph]G;Lsf] ;[hgf jf k|bz{g4f/ cles/Of
- c. agency by necessity cfj:ostf4f/f ePsf] cles/Of- TO real and definite necessity-it must be impossible to obtain notice of the principal k|wfgn] ;"rgf kfpg c;Dej ePdf - good faith- interest of parties etc. this can be made clear with the case decision held in Sims and Company vs. Midland Rly co.1913 gf}gL Wo" lglZrt 7fpFdf k'/ofpg] /]nj] sDkgL ;Fu s/f/ u/]s]fdf x8tfnsf] sf/Of uGtJodf k'/ofpg l9nf eof] . glhs ahf/df Wo' a]lrof] . o:tf] cj:yfdf Wo' a]Rg' cfj:ostf lyof] egL d'4fkb{ cbfntn] JofVof u/of] .

3. agency by ratification cg'df]bg 4f/f Ph]G;L ;[hgf jf k'i6Ls/Of 4f/f Ph]G;L such conformation is called ratification, which gives liability to the principal where an agent does an act for his principal without consent or knowledge, and the act is accepted by the principal afterwards, it is called agency by ratification.

Valid rules of ratification

1. existence of principal k|wfgsf] lJBdfgtf
2. express or implied ratification
3. full knowledge k|ofKt hfgsf/L
4. Absolute ratification k'Of { cg'df]bg
5. Lawfull act
6. Reasonable time
7. No damage to other party
8. act done on behalf of another person bf];|f] klfsf] tkm{af6 sfd u/]sf] x'g'kb{5 .
9. Communication must be done
10. Party must be competent
11. Ratification must be unconditional,
12. within the authority of principal k|wfgsf] clwsf/ lf]qdf l;ldt x'g'kb{5 .
4. Agency by operation of law. Sometimes an agency arises by operation of law. I.e. when a company is incorporated, its promoters are its agents by operation of law.

Rights duties and personal liabilities of agent.

rights of agent

1. right to get compensation indemnification lfltk'lt{ kfpg] clwsf/
- right to indemnification against the acts done on good faith c;n ;befjdf u/]sf] sfo{ ubf{ k'u]sf] lfltk'lt{ kfpg] clwsf/
- right to indemnification against the acts done of lawful acts sfg"Gf ;Ddt sfo{ ubf{ k'u]sf] lfltk'lt{ kfpg] clwsf/

-right to indemnification for injury due to cause of principal negligence k|wfgsf] nfk/jfxLsf sf/Of ePsf] lfltsf] lfltk'lt{ kfpj] clwsf/ k|wfgsf] nfk/jfxLsf sf/Of ePsf] lfltsf] lfltk'lt{ kfpj] clwsf/

-right to claim compensation in case removal without any reason ljgfsf/Of x6fPdf lfltk'lt{ kpg] clwsf/

2. Right of lien j:t' sJhf ug]{clwsf/ wf/Ofllwsf/

3. Right to retain money ?k}ofF /fVg] clwsf/

4. right to stoppage of goods in transit j:t' af6f]df /f]Sg] clwsf/

5. Right to claim remuneration,

6. right to get reasonable compensation in case of removal d'Vo JolQmn] k|ltlglwnfO{ x6fPdf k|ltlglwnfO{ dgfl;j dfkmLssf] lfltk'lt{ lbg'kg]{

Duties of agent

1. Duty to follow the direction of principal se.59 1 ab

2. Not to deal with his own account lglhtj/df Jojxf/gug'{

3. Duty to pay the principal k|wfgnfO{ /sd e'StfgL ug'{

4. Duty to do honestly

5. Duty to submit actual account. plrt lx:fj k]z ug'{ kg]{

6. Duty communicate to the principal at any time k|wfgnfO ;b)a ;"rgf ;+rf/ ug'{kg]{ st{Jo

7. Duty not to disclose confidence or secrecy uf]Kotf e+u gug'{

8. Duty not to set-up adverse title cfkmgf] xsbfjL gug'{

9. Duty not to earn undue advantage or profit cg'lrt nfe k|fKt gug'{

10. Not to delegated his authority clwsf/ k|Tofof]hg gug'{

11. Duty to take reasonable step plrt sbd rfNg'

Personal liabilities of agent.

According to se.60 (1) of NCA unless otherwise mentioned in the contract, the agent becomes personally liable for his works under the following circumstances;

1. If the contract is concluded with the provision of personal liability. olb JolQmut ?kdf pQ/bfoL x'g] u/L t]:f]f] klF;Fu s'g} s/f/ u/]df,jf

2. In case any work has been done for or on behalf of an unnamed principal person. a]gfdL k|wfg sf nflu sfd u/]sf]df To:tf] k|wfg x'g] JolQm k|sf; gul/Pdf, jf

3. in case principal person can not be sued for any reason. s'g}sf/Ofn] k|wfg lj?4 d'4fdldnf ug{ g;lsj] ePdf, jf

4. In case the contract has been signed in his own name. cfkmg} gfd af6 s/f/ u/]sf] ePdf, jf

5. If agent has acted against the agency contract or goes beyond his authority. s/f/sf] zt{ jf clVtof/L eGbf afxL/ uO{ sfd u/]sf] ePdf, jf

6. In case any fraud or misrepresentation has been committed in the course of the transaction. sf/f]af/sf] l;n;Lnfd em'Sofg jf hfn;fhL u/]sf] ePdf, jf

7. in case the agent must bear personal responsibility according to the nature of the trade.Jofkf/sf] k|s[lt adf]lhd clestf{g} JolQmut ?kdf pQ/bfoL x'g'kg]{ ePdf, jf

8. in case the interest of the agent are also involved in the transaction. sf/f]af/df clestf{sf] ;d]t :jfy{ ;+nUg x'g]ePdf.

4. Rights and duties of principal

right of principal

1.right to bind his direction to the agent. clestf{nfO{ cfkmgf] lgb]{zg kfngf u/fpg] clwsf/

2. right to demand account of agency to agent . clestf{;Fu cles/Of ;DalGw lx;fj dfu ug{ kfpj} clwsf/
3. right to demand compensation if agent doing against the direction of principal. cfkmgf] lgb]{zg ljk/t sfd u/]df lftk'lt{ kfpj} clwsf/
4. right to demand undue profit earn by agent. clestf{n] cfh]{sf] cg'lrt nfe dfug] clwsf/
5. right to revoke agent authority if he doing fraud against himself.cfkm'nfO{ wf]sf lbO{ v/fj cfr/Of u/]sf]df clestf{ sf] clwsf/ v08g ug]{ clwsf/
6. right to notice. ;'rgfsf] clwsf/
7. right to recover compensation.
8. right over confidential information and documents. uf]Kohfgsf/L / sfuhft dflysf] clwsf/
9. right to receive cash gub k|fKt ug]{ clwsf/

Duties of principal

1. duty to remuneration according to contract or reasonable basis to the agent. clestf{nfO{ s/f/ adf]lhd dgf;j kfl/>lds e'StfgL ug'{kg]{ st{Jo
2. to provide indemnity xh{gf pknJw u/fpg'kg]{
 - pay indemnify incase loss due to by good faith c;n lgotn] sfdubf{ xfgLePdf lftk'lt{ lbg'kg]{
 - pay indemnify due to neglect x]nr]s]ofO sf sf/Of k'Ug uPsf] lftsf] k'lt{ ug]{kg]{
 - duty to indemnify in case of removal without reason ljgfsf/Of clestf{nfO x6fPdf lftk'lt{ lbg'kg]{ st{Jo
3. to make reasonable compensation plrt lftk'lt{ lbg'kg]{ st{Jo
4. duty doing from notice as agent as well as principal clestf{n] kfPsf] ;"rgf kgL k|wfgn] kfP;/x Jojxf/ ug'{ kg]{
5. duty to indemnify loss against consequence of lawful acts sfg"g adf]lhd sfd ubf{ k'u]sf] lftsf] lftk'lt{ lbg'kg]{ st{Jo

5. Delegation Authority of agent clestf{sf] clwsf/ k|Tofof]hg

sfg"gsf] ;fdfGo lgod s] 5 eg] d'n clestf{ n] cfkm'nfO{ h'g sfo{ ug{sf] nfuL lgo"lQm ul/Psf] x'G5 ;f]xL sfo{ u/fpg p;n] c? s'g} kgL JoltmnfO{ clestf{s} ?kdf lgo"St ;Sb}g . clestf{ cfkm}n] ug'{kg]{ sfo{ cfkm} gu/L csf]{ JoltmnfO{ k|Tofof]hg ug{ kfpb}g . of] l;4fGt k|l;4 /f]dg egfO=====

The general rule is that 'an agent has no right to delegate his authority to another person without the consent of his principal. This rule or provision is based on the popular maxim of Roman law i.e. delegates non potest delegare. Which means a delegate can not further delegate.k|Tofof]lht clwsf/ kfpj] JolQmn] Tof] clwsf/ k'gM k|Tofof]hg ug{ ;Sb}g. In fact this doctrine is based on the maintenance of confidence and integrity as well as the standard of business. se.190 of ICA has adopted this principal that ' an agent cannot lawfully employ another to perform personally. clestf{n] JoQm jf kl/nlft ?kdf cfkm} u5'{ egL eg]sf] sfo{ ug{ c?nfO{ sfg"gL ?kdf lgo'Qm ug{ ;Sb}g .' In outside se.58 of NCA 2056 has required to get consent of the principal before delegating power to sub-agent by the agent. The exceptions of the above rule, principal arise on the basis of the consent of the principal and the provision of the law of contract of agency and their conditions, which are guided by practice or custom and by the nature of the business.

The following are the circumstances on which the exceptions are based;

1. where the custom of the trade permits delegation. (hxfF Jofkf/sf] k/Dk/fn]] g} k|Tofof]hgfnfO{ cg'dlt lbPsf] x'G5.
2. where the nature of the agency requires delegation. hxfF Ph]G;Lsf] k|s[ltn] g} k|Tofof]hg cfj:os x'G5 .
3. where the principal permits delegation hxfF d'Von] g} k|Tofof]hgsf] cg'dlt lbPsf] x'G5 .
4. where an emergency require delegation hxfF s'g} ;+s6sf sf/Of k|Tofof]hg ug{ cfZos x'G5 .
5. where the principal known that the agent intends to delegate, but does not object to it. d'Vo JoltmnfO{ clestf{n] clwsf/ k|Tofof]hg ug{ rfx]sf] 5 eGg] s'/f hfgsf/L x'bfx'b} To:nfO{ cl:jsf/ gu/]df
6. where the act to be done is purely administrative nature hxfF ul/g'kg]{ sfd z'4 k|zf;lso k|s[ltsf] x'G5 .

6. Sub and substituted agent. ;xfos tyf k|lt:yflkt clestf{

A. Sub-agent ;xfos clestf{ \pk k|ltglw

A sub-agent is an agent appointed by an agent. The relation of the sub agent to the original agent like that of an agent to the principal. NCA 2056 has not defined the term sub-agent but made provision regarding appointment of such an agent. According to se.58 (1) of NCA has provided that an agent can appoint a sub-agent according to the nature of business, provisions and practices of contracts relating to agency with the consent of the principal. Similarly, se.191 of ICA 1872 has provided that a sub-agent is a person employed by and acting under the control of, the original agent in the business of agency. The sub-agent is responsible with agent and not principal. But in case of willful fraud and wrong the sub-agent may be liable to the principal if the principal sues him because he can sue agent or sub-agent as he likes. ;xfos clestf{ eGgfn] d'n clestf{n] cfkm'n] kfPsf] clwsf/ cGt{ut cfkmgf] dftxtdf /xg] u/L lgo"St u/]sf] csf]{ clestf{ xf] . ;xfos clestf{n] d'n clestf{sf] lgoGq0fdf /x]/ sfd ub{5 . s/f/ P]g sf] bkmf %* -!_ cg';f/ s'g} Jofkf/ Joj;fo jf sf/f]jf/sf] k|s[ltn cg';f/ pk k|ltglw lgo"St ug'{kg]{ jf Ph]G;L s'/f/sf] Joj:yf jf k|rng cg';f/ pk k|ltglw lgo"Q mug{ ;lsg] ePdf s'/f/df cGoyf Joj:yf ePsf]df afx]s k|ltglw n] d'Vo Joltm sf] :jLs[ltn lnO pk k|ltglw lgo"tm ug{ ;Sg] 5 .t/ k|ltglwn] g} JolQmut ?kdf sfo{ ;Dkfbg ug]{ u/L s'/f/ ePsf] lghn] o;/L pk k|ltglw lgo"Q mug{ ;Sg] 5 . e/lto s'/f/==bfkmf !(cg';f/ ;xfos clestf{ eg]sf] To:tf] JolQm xf] h;nfO{ cles/Of Joj:fodf d'n clestf{n] lgo"St u/]sf] x'G5 h;n] d'n clestf{sf] lgoGq0fdf /xL sfd ub{5 . o;n] d'n clestf{nfO{ k|lt:yfkg ub}{g . :jtGq k"j{s sfd ug]{ cwLsf/ /xFb}g .

Where the sub-agent is not appointed with authority or his appointment is justified, the following results come into existence.

1. The principal is not represented and not bound by the works of sub-agent.
2. The agent is fully responsible for principal, third party and the sub agent.
3. The sub-agent is not liable with the principal in any case including fraud or willfull wrong committed by him.

B. Substituted\co-agent k|lt:yflkt ;x clestf{

A substituted agent is the person appointed by an original agent to act for the principal in the business of agency, with the knowledge and consent of the principal. The substituted agent is also known as co-agent. After the appointment of such an agent the original agent retires and gets rid of duties towards the principal. NCA 2056 has not defined the term substituted agent. Se.194 of ICA defines the term substituted agent as a person appointed by the agent according to the express or implied authority of the principal, to act on behalf the principal in the business of agency. The duty of the original agent is to choose a proper substitute agent with reasonable care. But the original agent does not guarantee the skill, integrity and solvency of the substitute agent.

7. Termination of contract of agency
se. 61, 62 and 64 of the NCA has provided the various modes to terminate agency; they are;

- a. By acts of the parties
 1. by mutual agreement
 2. by renunciation of contract
 3. by revocation of authority of agent
 4. by fulfillment of contract of agency
 5. by fulfillment \complete of time
- b. by operation of law
 1. by expiry or fulfillment of time
 2. by death or insanity of party
 3. by insolvency of principal
 4. by destruction of subjectmatter
 5. by dissolution of company
 6. by change of law
 7. Either party becoming alien enemy

Law relating to agency in Nepal

The history of business law in Nepal is not so long. The agency Istihar (Act) 1992 B.S. was the first agency law of Nepal, which remained active for approximately 22 years. After the establishment of the democratic system in 2007 B.S. a new legal and governance system was initiated. Then, the law relating to agency 2014 was enacted in 2014\11\13 in Nepal and replaced the ordinance of 1992 B.S. Till date this act is in practice and contains 11 se.in totals. For the first time this law was amended in 2018 B.S. and for a second time in 2020 B.S. when the agency regulation 2019 came into force. The new law relating to the contract of

agency is provided in the new contract Act, 2056 ch.8 between se.56 to 64 which tries to fulfil the lack of the agency Act, 2014. The contract Act is regarded as the main law governing the business of agency in Nepal. Which defines contract of agency, principal, agent, sub-agent and made provisions regarding rights and duties of such personalities and personal responsibility of the agent, modes of termination of agency business and the like. However, the provisions made by this Act too are not regarded to be adequate in the present business era.

The law relating to the agency Act, 2014 has provisions regarding the definition of agency, registration of agency, renewal and transfer, punishment and consequence for a breach of the law etc.

Main provisions of the law relating to agency in Nepal

g]kfndf cles/Of ;DalGw sfg"gsf k|d"v Joj:yfx?

1. Objective of the Nepal agency Act, 2014.

- to prevent the unreasonable benefit from the transaction relating to agency. P]h]G;L ;DalGw sfdsf/f]af/df cg'Irt kmfObf p7fpg /f]s nufpg]
- to control the transaction relating to agency and manage the other necessary steps Ph]G;L;DalGw sf/f]af/nfO{lgoGqOf / c? cfjZos Joj:yf ug{
- to maintain the economic interest and public facility ;j{;fw/Of hgtsf] ;'ljwf / cfly{s lxt sfod /fVg

2. definition of agency:- se. 2 a of agency Act mentioned that any person taking agency of inland or foreign business firm to act through the kingdom or any part of the kingdom is called the agent and this word agent includes in it the persons like distributor, stockiest nominee or representative. Ph]G;L eGgfn] g]kfne/ jf To;sf] s'g} Onfsfsf] lgldt :jb]zL jf ljb]zL kmd{sf] Ph]G;LIng] JoQmL ;Demg' kb{5 / ;f] ;Jbn] l8il6Jo'6/, :6ls:6 gf]ldlg jf l/lk|h]G6]l6e eO{sfdug]{ JoIQm ;d]tnfO{ hgfpFb5 .

3.Registration procedure of agency Ph]G;L btf{sf] sfo{l]wL

according to se.3 of agency act, 2014 has provided that no one can act as an agent without registering his name with the department of commerce, gov otherwise he will be penalized with fine of up to NRS 100/-. ? kfrsf] /;Lb sf6L lgj]bg lbg'kg]{ btf{ t:t' / ? !)) nfU5

4. Renewal of agency gljs/Of

Registration of an agency is valid for one year. But the existing agency which is working lawfully as an agency before applying this act, can be renewed as per the determinid procedure, otherwise, they will not be valid after that.gljs/Of k|To]s jif{ ug'{ kb{5 . r}q dxLgfdg gljs/Of ug'{ kb{5 .

5. **transfer of agency gfd;/L:-** the registered agent can transfer agency to another. for this purpose, the person willing to be new agent has to submit the letter of consent of the principal as well as the original agent and application with 25/- rupees at the DOC, refundable in case of non-transfer of agency. /lhi68{ clestf{n] cfkmgf] cles/Of Joj;fo s'g} kgL JoIQmnfO{ ljqmL ljt/Of ug{ jf x:tfGqOf jf gfd;/L u/L Ing ;Sb5 . sf/Of j; gfd;/L x'g g;s]df btf{ ubf{ lnPsf] ?@% lkmf{ ul/G5 .

6. to submit statement of account> According to se.5 of the act the registered agent must submit the proper account in every three months in the department of commerce mentioning following things; details of the goods received, details of the goods add, details of the goods remained and value of the goods

remained. k|To]s /lhi68{ clestf{n] cfkm'n] u/]sf] sfd, ljqmLsf nflu k|wfgaf6 cfkm'n] k|fKt u/]sf], ljqmL u/]sf] / d}Hbftdf /x]sf] lrh j:t' To;sf] b/ efp cfbL s'/fsf] ljj/Of sf of{nodf k]z ug{ kb{5 .

7. Legal action / effects of non-registration. There are some legal actions for those who breach the provisions to the act;
 - a. penalty for the breach of registration:- the GON can punish the agent working without registration with the punishment of fine up to rs 1000/-. gfd;f/L gu/L cles/Of Joj;fo u/]df ?!))) hl/jfgf x'g] P}gsf] bkmf *df Joj:yf 5 .
 - b. The GON may also punish the agent and any other person working contrary to legal provision of the Act with the fine upto rs 500/- . or prohibition to work as agent for upto 2 years. bkmf gf} cg';f/ ;DalGwt lgsfo af6 lbPsf] cfb]z tyf lgodx?sf] kfngf gePdf jf pn+wg u/]df g]kfn ;/sf/ n] @ jif{ ;Dd Joj;fo /f]Ssf of %)) ;Dd hl/jfgf ug{ ;S5 .
 - c. the agent violating the condition of registration which has been made at the time of registration with essential terms is subject to punishment of fine upto rs .500 or restriction to work as agent for upto 5 years. bkmf & cg';f/ ;DalGwt lgsfoaf6 lbPsf] cfb]z PjF sa'lnot ljl/t sfd u/]df g]kfn ;/sf/ n] % jif{ ;Dd Joj;fo /f]Ssf jf ?%)) ;Dd hl/jfgf ug{ ;Sg]5 .

Distinction between sub-agent and substituted agent; ;xfos / k|ltiyflkt clestf{sf] lardf km/s

Sub-agent

1. he works under control of agent.
2. sub-agent is responsible to the original agent.
3. he doesnot replace the agent.
4. a sub-agent is also becomes the agent of the original agent.
5. there is no direct contract between the sub- agent and the principal.
6. sub-agent can't claim his remuneration with the principal, he can claim with the original agent.
7. his liability is limited than main agent.
8. he can not be sued for goods in stock by the principal.

Substituted agent

- 1.he works under the direction of the principal.
2. a substitute agent is responsible to the principal alone and not to the original agent.
3. he replace the agent.
4. the substitute agent is the agent of the principal.
5. there is a direct contract between the substituted agents and the principal.
6. substituted agent can claim his remuneration with the principal.
7. his liability is unlimited than the sub agent.
8. he can be sued for goods in stock by the principal.

Negotiable instruments

1. Definition of negotiable instrument -

The term negotiable instrument literally means a written document which creates a right in favors of some person and which is freely transferable. These instruments have gained prominence as the principal instruments for making pass on freely from hand to hand and thus form an integral part of the modern financial transactions.

The negotiable instruments Act, 1881 does not define a negotiable instrument and section 13 merely states that A negotiable instrument means a promissory note, bill of exchange or cheque payable either to order or to bearer.

The contract Act is silent regarding the negotiable instrument, though it comes under the performance of a contract se.2 e of NIA 2034 defines it thus promissory note and bill of exchange are said to be negotiable instrument. Cheque is included in bill of exchange. se. 2 v of NRB Act 2058 defines cheque means a bill of exchange drawn on anyh bank ordering it to make payment on demand. Se. 2 r of NRB Act defines negotiable means the act transferring an intrument to an person having the right to hold Negotiable instrument enabling him or her to become a bearer. se.2 s of the same Act defines Negotiable instrument means letter of credit, bill of exchange.

2. Salient features or characteristics of a negotiable instrument

1.a negotiable instrument must be easily transferable and it may be payable either to bearer or to order of the named payee.

2.a holder in due course can sue on the instrument in his own name, he need not depend upon another's title....Nor is he under any duty to justify his title in the first instance.

3.An instrument must be in writing.

4. The negotiable instrument should not be conditional.

5. There must be clear and specific period of time for its payment.

6. it must be signed by the maker or drawer.

7. Legal presumption- there is presumption that the instrument was evidence in all the negotiable instrument.

- Consideration
- Date of preparation
- Time of transfer
- Holder in due course
- Date of acceptance
- Endorsement

3. Kinds of negotiable instrument.

A. negotiable instruments by statute or law- promissory note, bill of exchange, cheque etc.

Cheque-

Cheque is one of the important negotiable instruments. It has been used since long as a method of payment for settling accounts in business transactions. It was originally spelt as check, carrying the meaning of a written order on a bank directing it to pay a certain sum of money. Cheque is an order on a bank purporting to be drawn upon a deposit of funds for the payment of a specified sum of money on presentation, to the person named in the document, or to him on his order or to the bearer. It is made payable instantly on demand.

se. 2 h of Negotiable Instrument Act, 2034 defines a cheque thus- a cheque is a bill of exchange which is drawn upon a banker to pay on demand. NRB Act 2058 has mentioned that cheque means a bill of exchange drawn on any bank ordering it to make payment on demand.

se. 6 of the Indian negotiable instrument Act, 1881 states that A cheque is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form.

Thus a cheque is a negotiable instrument like a bill of exchange. It has two distinctive features in comparison to other instruments:

- It is always drawn on a bank.
- It is always payable on demand.

Essential features of cheque

1. A cheque must fulfil all the essentials of a bill of exchange.
2. A cheque is an unconditional instrument.
3. A cheque is payable on demand.
4. A Cheque is drawn only on a bank, where the drawer has managed an account for collecting money.

Types of Cheque

1. Open cheque- open cheques are paid over the counter of a bank. They need not be put through the bank account. Such types of cheques have no marking. Therefore, anybody can change this cheque into cash. The open cheques can be categorised into two kinds a. bearer and b. ordered.

Bearer cheque- the person who bears the cheque may encash it over the counter of bank. The bearer's signature is not necessary in the cheque. It is more risky.

Ordered cheque- where a cheque is transferred with the endorsement on the back to order a payment by the person whose name is prescribed or transferred by him and that becomes holder in due course that is the ordered cheque.

2. Crossed cheque:- With a view of avoiding the risks of open cheque and protection of right of owner of the cheque is the main motto of the crossed cheque system. Crossing the check is the direction to the banker not to pay the cheque in the bank counter. The crossed cheque must be put through a bank account, which can provide a protection and safe guard to the owner and the receiver of the cheque. Such a mechanism of crossed cheque system is more helpful to find out the culprit in the course of business.

a. general crossed cheque: where two parallel lines are drawn across the face of the cheque that is the symbol of the crossed cheque. Such a cheque is not encashed by the paying banker and proceed proceed in any banker.

b. special crossed cheque:- when a banks name is put in the crossed line of the cheque, it is known as a special crossed cheque. Such types of cheques are possible to collect only in the bank named in the crossed cheque.

c. Account Payee Cheque: Where 'A/C Payee' is termed between the parallel line of the cheque that is known as account payee cheque. Such type of cheque is collected in the account of the same name of holder in due course. This type of negotiable instrument is more useful and practical in the modern business.

Bank Draft

Bank draft is also one of kinds of negotiable instrument like a cheque. When a bill of exchange is drawn by a bank it is called a 'Banker's Draft'. the bank draft may be of two types:

- A bank draft is an order issued by one branch to another branch of the same bank, and
- A bank draft issued by one bank to another bank.

Such an instrument is very much like a cheque with the following distinct features:

- It is drawn only by a bank, upon its own branch or upon another bank.

- It can not be easily stoped or countermanded.
- It can not payable to the bearer of the cheque.
- It is payable on demand.
- IT is one of the safest instruments for money.

Promissory Note:-

Se. 4 of the Indian negotiable instruments Act, 1881 states that A promissory note is an instrument in writing (not being a bank-note or a currency note) containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument. se.2 (f) NIA Defines A promissory note is an instrument in writing, except government note or bank currency, containing an undertaking to pay, without any condition, certain sum of money to any particular person referred to in such instrument or to the person ordered by such person or to the bearer of such instrument on a fixed date or on demand. Thus, a promissory note contains a promise by the debtor to the creditor to pay a certain sum of money after a certain date. Hence, it is always drawn by the debtor. He is called the maker of the instrument.

Essential elements of a promissory Note;

a. must be in writing, b. promise to pay, c. definite and unconditional, d. signed by the maker, e. certain parties, f. certain sum of money and g. promise to pay money only. i.e. I promise to pay B or order rs. 500 with 10 percent interest rate for his consideration.

Bill of exchange:-

Se. 2(g) of NIA defines, Bill of exchange means an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand, or at a fixed or determined future time, a certain sum of money to or to the order of a specied person or to the bearer of the instrument.

section 5 of the Indian negotiable instruments Act, 1881 states that A bill of exchange is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of , a certain person or to the bearer of the instrument. A bill of exchange is always drawn by the creditor on the debtor. There are three parties in

the bill of exchange. a. drawer, b.drawee and c.payee. The person who draws it, is called the drawer and the person on whom it is drawn, called the drawee or acceptor and the person to whom the amount is payable is called the payee. It must be in writing. The order must be to pay money and money only.

The essential requirements of a bill of exchange may be stated briefly as below.

1. the bill of exchange must be in writing. it should not be oral one.
2. the bill of exchange must contain an express order to pay.
- 3.it must be signed by the drawer.
4. it must contain an order to pay in terms of money only.
5. the order to pay must be unconditional etc.
6. THE money must be payable to a definite person.

Distinction between promissory note and bill of exchange

Promissory note

- 1.there are only two parties i.e. the maker or debtor and the payee or creditor.
- 2.it cannot be made payable to the maker himself.
3. it contains an unconditional promise by the maker to pay to the payee or his order.
- 4.it does not require any acceptance.
- 5.there is no question of conditional acceptance.
- 6.the maker stands in immediate relationship with the payee.
7. the liability of the maker is primary and absolute.
- 8.if it is dishonoured, no notice of dishonored, no notice of dishonour is to be given to any person.
- 9.if it is dishonoured, it is not required to be protested.

Bill of exchange

1. there are three parties i.e. the drawer, drawee and payee.
2. the drawer and the payee or drawee and payee may be same person.
3. there is an unconditional order to the drawee to pay according to the drawer's attention.
4. it must be accepted by the drawee before presentation for payment.
5. it can be accepted conditionally.
6. the maker or drawer of an accepted bill stands in immediate relationship with the acceptor and the payee.
- 7.the liability of the drawer is secondary and conditional.

8. if it is dishonoured, due notice of dishonour is to be given by the holder to the drawee and the intermediate indorsers.

9. foreign bills must be protested for dishonor.

distinction between cheque and bill of exchange

Cheque

1. it is always drawn on a bank.

2. it is always payable on demand.

3. It is always drawn on a printed form.

4. The drawee(banker) need not accept a cheque.

5. it is always supposed to be drawn against the funds in the hands of the banker.

6. the liability of the drawer continues for 6 months.

7. it is free from stamp duty.

8. it is not drawn in sets.

9. it may be crossed to ensure safety.

bill of exchange.

1. it may be drawn on any one, including a banker.

2. it may be payable after a certain period or on demand or on sight.

3. it need not be drawn on a printed form.

4. acceptance by the drawee is essential.

5. there is no such supposition.

6. unreasonable delay in the presentation will discharge the bill.

7. it is subject to ad valorem duty.

8. foreign bills are always drawn in sets.

9. it cannot be crossed.

Hundis

Hundis are also one of the types of negotiable instruments. Usually, hundis are like a bill of exchange but sometimes they are found in the form of promissory note. A hundi differs from a bill, because a bill may include a hundi but hundi does not include a bill of exchange. The function of both instruments are similar. They are used to raise a loan for necessity or requirements in the field of business.

Hundi are categorised mainly into two types.

a. Darshani or demand hundi:- it is payable at sight, like a demand bill. Such type of hundi must be presented for payment within the reasonable time of receipt by

the holder. In case of a loss caused to the drawer by the delay in presentment it falls on the holder of the instrument.

b. Muddati or time hundi:- It is payable after a specified period, after the date of sight. It is like a time bill.

The hundi instrument is in practice in the business field, it comes under the customary rule of business law. Besides this there are different types of domestic and foreign hundis, which are in practice as to the demand of nature of business.

Parties to negotiable instruments

a. parties to promissory note- maker, payee, endorser and endorsee.

b. parties to bill of exchange- drawer, acceptor or drawee, acceptor for honour, endorser and endorsee.

c. Parties to cheque- Drawer, drawee (banker) payee, endorser, endorsee.

Holder

Who is holder?

The holder is a party of a bill of exchange, promissory note or cheque. It means any person who is (i) legally entitled to the possession of the instrument, and (ii) to receive or recover the amount due thereon from the parties liable thereto. That is either the payee or the endorsee of the instrument. The finder of a lost bill of exchange payable to a bearer or a person in wrongful possession of such instrument is not legally regarded as a holder. i.e. a cheque is issued in the name of Mr A the person named on it is the holder. The title holder may pass from person to person. The transferee or endorsee is also the holder.

NIA SE. 2(K) defines that- A holder is a person entitled to the possession of the instrument in his own name and to receive or recover the amount due thereon from the parties. To be a legal holder he has to fulfil two conditions.

a. Entitled to possession.

b. Entitled to receive or recover amount.

Holder in due course

Basic features of holder in due course:- A holder in due course means any person who for consideration becomes the possessor of an instrument, if payable to bearer or the payee or endorsee thereof, if payable to order, before the amount of instrument becomes payable and without having sufficient cause to believe that any defect is existed in the title of the person from whom he derived his title.

To be treated as a holder in due course a person has to prove that:

1. he has given the instrument for valuable consideration.
2. he has become a holder of the instrument before its maturity.
3. he has become the holder of the instrument in good faith.
4. the instrument in his hands was complete legally.
5. he must be a holder legally or entitle to possess the instrument.

A person can not be a holder in due course if:

- the instrument is obtained by gift, unlawful means or unlawful consideration.
- the instrument is obtained after its maturity.
- it is suspicious that the title of the transferer is defective.

A holder in due course means the holder who takes the instrument in good faith for value before it is overdue or out-law. The person who has given consideration is a holder, but it is not necessary to be adequate. A holder in due course is an important party to discharge the contraact.

Payment in due course: payment in due course means payment in accordance with the tenor of the instrument in good faith and without negligence to the possessor of instrument. Payment is due course said when it is paid: a. in accordance with the apparent tenor. b. to the possessor of the instrument c. in good faith without any negligence and foreign instrument.

Rights / privileges of a Holder in Due Course.

As an important party of an instrument a holder in due course acquires some certain exclusive privileges by the law. the privileges of a holder in due course are as follows;

1. A holder in due course can get a better title than that of the transferor.
2. Inchoate stamped instrument.
3. Liability of prior parties to holder in due course.
4. Right to suit.
5. Acceptance of bill drawn in fictions name.
6. Instrument delivered conditionally is negotiable.
7. Instrument is cured from all defects by a holder in due course.
8. Instrument obtained by unlawful means or for unlawful consideration.
9. Estoppel against denying original validity of instrument.
10. Estoppel against denying capacity of payee to endorse.
11. Endorser not permitted to deny the capacity of prior parties.
12. Except otherwise provided, all the holders are holders in due course.

Acceptance

Acceptance is the assent of an acceptor, maker, drawee or other party. It is one of the purposes of presenting of a negotiable instrument. Acceptance is done by the act of signification on the instrument with an assent of drawee. After acceptance, the drawee becomes responsible. Mere possession in the hands of a drawee is not regarded as an acceptance. And it is done in accordance with the law and custom of business.

It is only the bill of exchange that can be presented for acceptance, but every bill should be accepted. Those bills that have a fixed time prescribed or payable on demand need not be presented for acceptance. Acceptance is necessary to make the parties liable, in the following purposes of the bill of exchange.

- Acceptance in order to fix the maturity of the instrument.
- Acceptance before presenting the bill for payment, if it is expressly stipulated.
- Acceptance is made if presentation is optional, and provides additional security to bill of holder.

The following essentials are necessary for a valid acceptance.

1. acceptance must be made in writing,
2. it must be signed by the drawee or his agent,
3. it must appear on the bill/instrument,
4. it must be completed by delivery to the holder or by notice,
5. it must be within a reasonable time, if the time is not fixed,
6. it must be made in the drawee's office, if place is not specified.

Modes of Acceptance

Acceptance may be general or qualified:

- a. General acceptance:- when a drawer makes an acceptance without adding any qualification or condition there is a general or absolute acceptance.
- b. Qualified acceptance:- When a condition or qualification is added to the asset of the drawee there is a qualified acceptance. It is made in express terms which change the effect of the bill. Such an acceptance is dependent upon an event happening. A qualified acceptance varies from a partial acceptance, the bill is drawn by two or more drawees, and the acceptance is qualified as to time, place or amount.

Discharge of Liability

The discharge means release from the liability. Here discharge of liability means the modes of being free from the contractual or legal liabilities of the negotiable

instrument. After the issue of a negotiable instrument, it carries a liabilities to pay a certain sum of money to a holder, when this obligation is satisfied, the instrument is said to be discharged. Thus a negotiable instrument is to be discharged when all the rights are extinguished property.

Generally, discharge in negotiable instrument is used in two sense; a. discharge of the instrument itself, and b. discharge of the parties to the instrument.

a. discharge of the instrument itself:- The instrument is discharge when it ceases to the negotiated. Chapter 5 of NIA has made provisions in this regard. An instrument is ceased when duly made payment, presented after lapse of time or any other modes.

1. By payment in due course:- The natural and common mode of discharge of instrument is payment in due course. In due course means negotiation of the the instrument as accordance to the rules and within the negotiable time, in good faith by the valid parties.

- If the payment made with apparent tenor of the instrument.
- If the true holder possesses the instrument.
- If the payment made in good faith and without any defect in the title of the instrument.
- if the payment made to the capable party having authority.

2. By the party primarily liable becomes holder:- where maker of the promissory note or acceptor of a bill of exchange becomes holder at or after its maturity in his own right, the instrument discharges. It means he has an absolute title and does not hold it conditionally or as an agent.

3. By the act as of general contract:- The instrument may be discharged by operation of law in chase of insolvency, lapse of time, limitations under statute, as that of a general contract. The stranger party may not raise any defence against a holder in due course.

4. By material alternation:- An instrument is discharged when the primarily liable party is discharged by material alteration in the instrument or by lapse of time making the debt time barred under certain rule.

5. By cancellation of the instrument:- Where the holder cancels or he waives the right with the intention to release the liable party thereon from the liability, the instrument automatically discharges.

b. Discharge of the parties to the instrument:- Any party or parties to the instrument are discharged from their liabilities under certain circumstances.

1. By cancellation:- When the holder of the instrument or his agent deliberately cancels the name of the drawer, acceptor, or endorser of the instrument that shall be discharged from the liability. Se. 56 of the NIA provides those conditions.

- if holder intentionally cancels the name of acceptor or endorser with the intent to discharge him, to such holder and all parties claiming through such holder.

- if a holder thereof who otherwise discharges such acceptor or endorser or drawer to all parties deriving title under such holder after notice of such discharge.

- if the instrument is payable to bearer or has been endorsed in blank and such drawer, acceptor or endorser makes payment in due course of the amount due thereon, is discharged to all concerned parties thereto, related with the instrument.

2. By payment:- According to se. 58 all the rights of action on an instrument are extinguished where payment due thereon is made in due course to the person legally entitle to it. A drawee is discharged from the liability, in case of a bearer's cheque by payment in due course to the bearer thereof and in the case of a cheque payable to order purports to be endorsed by or on behalf of the payee, by payment in due course.

3. By release:- Se. 58 provide that where the holder of an instrument discharges any party by any method other than the cancellation, such as by separate mutual agreement the party so discharged and all parties subsequent to him are discharged from their liability.

4. By giving additional time:- Se.57 where the holder allows the acceptor of an instrument a period of more than two days exclusive of public holidays to consider wherever he will accept the same, all prior parties who have not given consent to such allowance, are thereby discharged from the liability to such holder.

5. BY acceptance with conditions:- Se. 60 provide that where a draft drawn by one office of a bank upon another office of the same bank for a sum of money payable to order on demand purports to be endorsed by or on behalf of the payee, the bank is discharged by payment in due course.

6. by fraudulent acts:- Se. 61 provide that some fraudulent acts, (such as alteration without consent or scratching or erasing any word/alphabet) has been made in the instrument may cause discharge from the parties concerned. Provided an explanation in the same section 61 that any functions of alteration or

scratching and erasing in a way that another meaning in the negotiable instrument to be given or the appearance of the instrument to be changed or the liability of the concerned parties to be changed.

7. All parties to be discharged:- Where an instrument which has been negotiable in, at or after maturity, held by the acceptor in his own right, all other parties shall be discharged from liability related with that instrument.

Contract of sale of goods j:t' ljqmo ;DalGw s/f/ Introduction

Sale of goods refers to the transfer of ownership of goods against a price from one person to another. It is acts performed between a buyer and a seller and a contract of sale of goods is created between them. Transaction of sale of goods is based on the contract. As in other contract it needs the competency of parties, free consent, two parties, lawful object etc. In this respect most of the countries have their laws to govern it. The sale of goods Act, 1979, the unfair contract

terms Act, 1977 ordinary principles of contract law govern this matter in UK. In India context, the sale of goods Act, 1930 regulates such matter. Basically, the Indian sale of goods Act, 1930 is based on English sale of goods Act, 1893. Before issuing the Act of 1930 the law relating to sale of goods was contained in chapter vii of the Indian contract Act, 1872. The law relating to sale of goods in Nepal is also influenced by the Indian sale of goods Act, 1930.

Meaning of contract of sale of goods.

The term goods including every kind of movable goods or property except money and actionable claim. se. 2(7) of the Indian sale of goods Act, defines the term; goods means every kind of movable property other than money and actionable claims and money; and includes stocks and shares, growing crops, grass and thing attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale. j:t' eGgfn] cleof]uof]Uo bfjL PjF d'b]f afx]s x/]s lsl;dsf rn j:t'nfO{ hgfpFb5 / j:t'cGt{ut C0fkq, nflu/x]sf] afnL / hUufaf6 5'6\ofP/ ljlqm ug{ ;lsg] j:t'x? kb{5g . similarly, Nepal law interpretation Act, 2010 defines the term goods in se.2 (0) as 'movable goods.' accordingly, the term movable goods refer to the property other than immovable property. Hence, goods include every kind of movable property other than money and actionable claims and the term sale means selling of thing of any kind. Therefore, sale of goods is the fusion of these two terms goods and sale. se.4 (1) of Indian sale of goods Act, 1930 has provided that 'a contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. -j:t' ljlqmsf] s/f/ eg]sf] To:tf] s/f/ xf] h;df ljqm]tn] qm]tfnfO{ d'No lnP/ j:t' x:tfGq0f u5{ jf x:tfGq0f ug{ dGh'/ u5{ _ similarly se.40(1) of NCA has provided that a contract of sale of goods is deemed to have been concluded if any seller agrees to handover the goods to the buyer either immediately or in the future for a price. bkfm \$) ! sf] :kli6s/0f cg';f/ j:t' eGgfn] tTsf n k|rngdf /x]s]f d'b]f, lwtf]kq jf ph'/L u/L sfof{Gjog ug{ ;lsg] bfjL afx]s vl/b ljlqm x'g ;Sg] s'g} kgL rn ;DktL ;Demg' k5{ .

j:t' ljlqm ;DalGw s/f/sf] d'n ljifo j:t'g} j:t' jf dfn;fdg xf] . o; ;Gbe{df j:t' zJbn] ;Dk'0f{ rn ;DkltnfO a'emfpb5 . o:tf] j:t' vl/b ljqmL ug{ ;lsg] x'G5 . k'/fgf b'n{e l;Ssf? Jofkf/ VoftLx? Jofkf/ lrGx k]6]G6 cfbL j:t'sf pbfx/0f x'g .

Thus, sale of goods means transfer of ownership of goods for a price from a seller to a buyer. Ownership is the legal right over the goods of a person. It is based on the contract. The parties to a contract of sale of goods may agree to any terms they like, relating to the delivery and payment of price and the like. The delivery of goods may be immediately or in future. The following aspects, Seller buyer and goods fall under such contract.

Features/essential elements of a contract of sale of goods

1. Movable property / goods,
2. Two parties i.e. buyer and seller,
3. Price / consideration of goods,
4. Transfer of ownership,
5. Essentials of valid contract
6. Contract may be conditional,
7. Express or implied contract,

8. Includes sale and agreement to sale:- a contract of sale of goods is a general term which includes both the terms sale and agreement to sale. Under a contract of sale the property in goods is immediately transferred at the time of making contract from the seller to the buyer. s]tf / ljqm]tf lar s'g} a:t' eljiodf jf s'g} lglZrt ;do kl5 jf s'g} zt{ k'/f u/]kl5 vl/b ljlqm ug]{ ;DaGwdf h'g dGh'/L x'G5 To:nfO{ ljlqm;DalGw ;Demf}tf elgG5 . cyf{t ljqm]tf] qm]tnfO{ s'g} j:t' kl5 jf eljiodf dfq x:tfGq0f ug{ dGh'/ u5{ eg] To:nfO{ ljlqm ;DalGw ;Demf}tf elgG5 . o;n] zt{o"tm ljlqmnfO{ hgfpb5 .of] sfof{Gjog x'g jfFsL s/f/ xf] . t'?Gt :jfldTjsf] x:tfGq0f x'b}g .

Difference between sale and agreement to sell j:t' ljlqm / ljqmo ;DalGw ;Demf}tfd leGgtf

Sale of goods

1. this is a current selling contract, tTsf] a:t' ljlqmsf] s/f/ xf]
2. ownership of the goods is transferred at the time of contract, t'?Gt} :jfldTj x:tfGq0f x'G5
3. the seller may file a suit against the buyer for price, d'nosf] nfuL d'2f ug{ ;S5
4. the buyer will responsible for the loss of goods after the sale, j:t' gf; ePdf x/fPdf s]tf g} lhDd]jf/ x'G5
5. the seller can sell specific and existing goods, ljlzi7 tyf jt{dfg j:t'sf] ljlqm x'G5
6. in case of insolvency of the buyer, the seller can have price only, vl/b stf{ lbjfnLof ePdf d'No dfq kfpFb5
7. after payment the goods in possession of the seller cannot be sold. e'QmfgL k5L To:tf] j:t'df ljlqmstf{sf] j:t'df clwsf/ jf x}sd x'Gg.

Agreement to sell

1. this is the agreement to sell the goods in future, o;df efjL j:t'sf] jLlqmsf] ;Demf}tf x'G5
 2. ownership of the goods will be transferred in future in certain circumstances, eljiodf jf s'g} zt{ k'/ ePkl5 ljqm]taf6 qm]tdf x:tfGq0f x'G5
 3. the buyer may file a suit against the seller for indemnity, lfltk'lt{ bfjL ug{ jLjm]tf] ;Sb5
 4. the seller will be responsible in case of a loss of the goods, j:t' gf;jfg ePdf jf x/fPdf ljqm]tf lhDd]jf/ x'G5
 5. the seller can sell future, contingent and uncertain goods, ;f+of]lus j:t'sf] ljlqmx'G5
 6. an unpaid seller may have the goods, in case of insolvency of the buyer, vl/b stf{ lbjfnLof ePdf e'StfgL gkfPsf] ljqm]tf] j:t' /fvG ;Sb5
 7. the seller can sell the same goods again to another buyer. pxL j:t' csf]{ jlQmnfO ljlqm ug{ ;Sb5
2. Tyeps of goods j:t'sf] k|sf/
1. Existing goods lJBdfg jf jt{dfg j:t'M- Indian sale of goods Act, 1930 se.6(1) has mentioned the existing goods are those, which are physically present in some person's possession and ownership. lJBdfg j:t' eGgn] To:tf] j:t'nfO{ ;+s]t u5{ h'g j:t' s'g} Jolqmsf] :jfldTJf PjF clwgdf ef]lts ?kdf df]h'b 5 . In our side NCA has not defined the existing goods. The goods owned or possessed by the seller at the time of sale are called the existing goods. lJBdfgj:t' aGws lng] JolQm jf clestf{ sf] sJhdf kgL /xG5 t/ p jf:tjLs :jfdL /xGg . These kinds of goods are again subdivided into the followings.
 - a. specific goods ljlzi7 j:t' ; - b.ascertained goods lglZrt j:t'

- c. unascertained goods
2. Future goods: according to section 2(6) of the Indian sale of goods Act, 1930 has provided that future goods means goods to be manufactured or produced or acquired by the seller after the making of the contract of sale. *Example: the wedding cake, cows milk of future date* it is example of future goods.
3. contingent goods: -this is one of the forms of future goods, here also parties agree to buy and sell goods in future time and the goods are delivered in the days ahead. the goods come into existence under this only after meeting particular event of future. section 6(2) of Indian sale of goods Act 1930 has provided that contingent goods are those goods, which acquisition by seller depends upon a contingency which may or may not happen.

Doctrine of caveat emptor on sale of goods

Caveat emptor is one of the fundamental principles of the law of sale of goods. The Latin version of this expression is 'let the buyer beware'. It means that the buyer must take the precaution and see that the goods are suitable for his particular purpose. The buyer is responsible for checking whether what he buys is in good order. It is no part of the seller's duty to point out the defects of his own goods. It is the buyer, who has to inspect the goods to see if that will suit his purpose. This rule is based on consumerism.

The Indian sale of goods Act, 1930 has recognized this maxim or doctrine. As stated in the first para of section 16 of this act the seller is not bound to point out the defects of the goods, which he offers for sale, rather the buyer is bound to satisfy himself about the quality and the suitability as well of the goods. NCA is silent in this regard. The provision of give and take no. 23 of the common code of Nepal has accepted these principles. The property pledge must be checked by the pledge at the time of contract. Any claim of the pledge after sometime of using such property is not valid. i.e. *Prem Bhandari vs. Agriculture Development Bank et al.* NKP 2044 p.589. *Ward vs. Hobbs* 1878.

Thus, the seller is not bound to disclose every defect of the goods in the absence of any enquiry of the buyer. The buyer himself must examine thoroughly and must be satisfied that the goods he wants to buy is fit for his purpose and goods.

exceptions to the doctrine of caveat emptor

1. In case of misrepresentation by seller
2. In case of concealment of defect
3. In case of sale by description
4. In case of sale by sample
5. In case of sale by sample as well as description
6. Lack of brand, trademark and patent.
7. where goods are not merchantable

Conditions and Warranty

In the contract of sale of goods there are contained various types of terms and stipulations regarding the quality, quantity, price, goods, modes of its payment and the time and place of delivery of goods. But all of them are not of equal importance. Some of the terms and stipulations are major terms called condition and some of them may be minor terms called warranties.

- a. condition :- a condition is a stipulation which is essential to the main purpose of the contract. it goes to the root of the contract. its non-fulfilment upsets the very basis of the contract. it relates with the main purpose of the contract of sale of goods. in case of a breach of the conditions, the aggrieved party has the right to repudiate the contract. NCA has not been defined the term of conditions. s.12(2) of the Indian sale of goods Act, 1930 has provided that - a condition is a stipulation essential to the main purpose of the contract the breach of which gives rise to a right to treat the contract as repudiated.

kinds of conditions

1. expressed condition :- the conditions which have been expressly (by using words in written form or oral) agreed upon by the contracting parties are called expressed conditions.
2. implied condition :- the conditions that have not been expressly agreed but are implied or acted at the time of making the contract of sale of goods are the implied conditions. the implied conditions are stated below;
 - a. if sale by description
 - b. condition as title of goods
 - c. sale by sample
 - d. sale by sample and description
 - E. merchantable quality of goods

f. condition as usage of trade Jofkf/sf] k|rng ;Dj|Gw ;t{

g. condition as to price d'No sf] zt{

b. warranty cfZjf;g

cfZjf;g kgL Ps k|sf/sf] cg'jGw jf ;t{ xf] h'g s/f/sf] d'Vo p2]Zosf nflu ;xfos x'G5 of] zt{ s/f/sf] d'Vo zt{ nfO{ ;dy{g ug]{ zt{ xf] . s/f/ sfg'gn] cfZjf;gsf] kl/efiff u/]s]f 5}g . ef/lto j:t' ljlqm P]gsf] bkmf !@-#_ cg';f/ cfZjf;g o:tf] Ps cg'aGw xf] h'g s/f/sf] d'Vo p2]Zosf nflu ;dkflZj{s x'G5 h;sf] v08g EfPdf zt{ eĒ ePdf em}+ j:t' c;jLsf/ ug]{ jf s/f/ g} /4 ug]{ clwsf/ t x'Fb}g t/ lfltk'lt{ sf] nflu d'2f rnfpg] clwsf/ dsf{ kg]{ klfnfO{ k|fKt ePsf] x'G5 . k|To]s s/f/df cfZjf;g JoQm jf kl/nllft b'j} x'G5 . s/f/ kl/kfngf x'g' cufj} s'g} zt{ k'/f x'g'kg]{ clgjo{ 5 egL ljlqm s/f/df s'g} s'/f pNn]v ul/Psf] 5}g eg] To;nfO{ cfZjf;g elgG5 . warranty is the stipulation which is collateral or a relating factor for the main purpose of the contract. But it is not such a vital factor as a condition is. In case of a breach of warranty the aggrieved party can only claim damage and can not be treated as a repudiated contract. The NCA is silent even about the term warranty. But the Indian sale of goods act, 1930 has defined the term clearly. se.12(3) of the act has provided that - a warranty is stipulation collateral to the main purpose of the contract, the breach of which gives rise a right to claim for damages but not a right to reject the goods and treat the contract as repudiated.

From the above definition it is clear that a warrrnty is also a term, but not a major component. It is only a secondary component, despite the fact that it is necessary for the performance of the contract. i.e. harison vs. Knowles 1917 kfgL hxfh lsGg] ;DaGwdf zt{x? /fv]sf] lyof] zt{ cg';f/ lfdtf %) 6g lyof] t/ \$)) 6g dfq af]Sg ;Sg] lfdtf /x]5 To; ;DaGwdf d'2fk/of] harisonn] lfltk'lt{ dfUof] / d'2f lhTof] .

Types of warranty

- a. express warranty
- b. implied warranty
- c. Warranty free from the dangerous vt/faf6 d'Stx'g] cf:jf;g british court held that the goods sold are of dangerous nature he will warn the ignorant buyer of the probable daner. if there is breach of this warranty the buyer is entitled to claim compensation for the injury caused to him. k|of]u ljlw ghfg]sf] sf/Of s|]tfnfO ePsf] lfltk'lt{ ljlqm]tfn] Joxf]g' kb{5 . obL vt/fo"tm j:t' ljlqm u/]df ;f]sf] hfgsf/L s|]tfnfO{ glbPsf] sf/Of qm]tfnfO ePsf] lfltsf] lfltk'lt{ ljlqm]tfn] Joxf]g'kb{5 .
- D. freedom of consume pkef]judf cfZjf;g

Transfer of ownership of goods j:t'sf] :jfldTjsf] x:tfGq0fM ;fdfGotof :jfldTjsf] x:tfGq0f eGgfn] ljlqmsf] dfWod4f/f j:t'sf] :jfldTj x:tfGq0f ug'{nfO{ hgfpFb5 . ljlqm]tfn] cfkmgf] :jfldTj jf clwsf/df /x]sf] j:t' qm]tnfO{ ljlqm u'g'nfO{ :JffldTjsf] x:tfGq0f elgG5 . ha ljlqm]tfn] cfkmgf] j:t' qm]tfnfO{ ljlqm u5{ tj To;df /x]s]f p;sf] :jfldTj qm]tfd x:tfGq0f x'G5 jf ;5{ . hj ljlqm]tfsf] :jldTjdf /x]sf] j:t' qm]tdf x:tfGq0f x'G5 tj j:t' ljlqm s/f/ kgL k'/f ePsf] df]lgG5 .

Ownership is the ultimate right over the goods and the transfer of ownership is a fundamental characteristic of the contract of sale of goods. Ownership is a legal right over the goods of a person.it is transferred by the contract of sale.it is also called risk follows the ownership. hf]lvdn] JjfldTjnfO k5\fpb5. The main purpose of such contract is to transfer the ownership transferred to buyer, he becomes the

owner of the goods and the seller ceases to be so since it is not possible to be absolute owner of any particular goods at the same time.

As transfer of property in goods is the essence of a contract of sale, it is important to determine the actual time of passing the property in goods to the buyer. The time of transferring property in the goods decides rights and liabilities of the seller and buyer. It determines the actual owner of the property in goods at the very moment. The time of transfer of property is significant for the following aspects;

- a. Risk passes with ownership: The risk of the property also passes from seller to buyer with the transfer of ownership of the property. The risk denotes the liability to bear the loss if goods are lost or damaged. This rule is known as risk follows the ownership.
- b. Proprietary rights over the goods
- c. Seller's right to sue for price
- d. Insolvency of seller or buyer

Rules regarding transfer of ownership

There are some rules, in this respect, under ss. 48 to 53 of NCA and under ss. 18 to 23 of the Sale of Goods Act, 1930 of India. They are as follows;

- a. Transfer of ownership of specific or ascertained goods
 - Transfer of ownership at the time of contract
 - The sale must be specific goods
 - The goods must be in a deliverable state
 - The contract of sale must be unconditional
- b. Ownership may also be transferred at some other time
 - When the goods are ascertained
 - Appropriation of goods to the contract
- c. Transfer of ownership on approval

Transfer of Title

It is the general rule that only the true owner can sell the goods. Therefore, a seller can only sell such goods belonging to him not belonging to other or owned or

possessed by other persons. Only the owner is authorized to transfer's title will also be defective to the same extent. The buyer receives the title from the seller no better than what the seller has. it means the seller cannot transfer the title of goods better than his ambit. NCA has not mentioned in this respect directly but The SC of Nepal has recognized this provision through its judicial decision that no one can pass the better title than he acquired. *chanu mahato vs. Baijanath mahato tharu et.al.* NKP 2024. Se.27 of Indian sale of goods act mentioned that where goods are sold by a person who is not the owner of the goods and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had.....'

;'fdfGo lgod s] 5 eg] j:t'sf] jf:tljs :jfdL nfo{ dfq j:t' ljlqmug]{ clwsf/ x'G5 . ljqm]tfn] cfkmgf] clwsf/df ePsf] j:t'afx]s x'sf] clwsf/ PjF :jfldTjdf ePsf] j:t' ljlqm ug{ ;Sb}g .ljqm]tfsf] clwsf/ bf]ifo'Qm 5 eg] qm]tfsf] clwsf/ kgL ToxL lsl;dn] bf]ifo'Qm x'g hfG5 . oBlk s]tfn] lgi7fk"j{s lsg]s} lsg gxf]; . o; ;DjGwdf g]kfn s/f/sfg'g df}g /x]sf] 5 eg] ef/lto j:t' ljqmL ;DalGw P]gsf] bkmf @& cg';f/ hxfF u};:jfdL4f/ j:t' ljlqm ePsf] 5 / p;n] lt j:t'x? jf:tjLs :jfdLsf] cg'dlt jf clwsf/ lno{ ljlqm u/]sf] 5}g, ToxfF qm]tfn] ljqm]tfsf] eGbf /fd]f] :jTjflwsf// jf clwsf/ kfpFb}g . o;s'/fnfO cu]hLdf no body can give what he himself has not got s;}n] kgL cfkm';Fu gePsf] j:t' lbg ;Sb}g eGg] xf] . of] lgodnfO{ g]kfnsf] ;jf]{Rr cbfntn]kgL dfGotf lbPsf] 5 .cfkm'nfo{ k|fKt xseGbf a9L xs x:tfGtl/t ug{ ldNb}g .

exception of the general rule transfer of title ;fdfGo lgodsf] ckjfb

there are some exceptions in the general rule of only the true owner can sell the goods. it means in some exceptional circumstances, the non-owner also can transfer the title of goods as true owner. such cases are as follows;

- 1.sale by a mercantile agent Jofkl/s clestf{4f/ ljlqm
- 2.sale by one of the co-owner ;x- :jfdL4f/f ljlqm
- 3.sale by a person in possession under voidable contract ab/efuL s/f/cGt{ut j:t' sJhdfd lng] JolQm4f/f ljlqm
- 4.sale by seller in possession after sale ljlqmkl5 a:t' sJhdfd lng] ljqm]tf4f/f lalqm
- 5.sale by a buyer in possession after agreement to sell ljlqmsf] ;Demf}tf cGt{ut j:t' sJhdfd lng] qm]tf4f/f ljlqm
6. sale by an unpaid seller cbt ljqm]tf4f/f k'gMljlqm
- 7.transfer of title by estoppel ljjGwg4f/f :jTjflwsf/sf] x:tfGq0f
8. sale by a finder of goods aGws u|xLtf4f/f ljlqm
- 9.sale by official receiver ;/sf/L k|fks4f/f ljlqm
10. Under the negotiable instruments act ljlgdo of]Uo ;fwg P]g cGt{ut ljlqm
11. Purchase in open market v'nfahf/df vl/b

Forformance of contract of sale.j:t'lalqm ;DalGw s/f/sf] kl/kfngf

The performance of contract of sale of goods also depends on the general principal of contract.simply the term performance is the fulfillment of the promises. The performance of contract of sale means the performance of the respective duties of the seller and the buyer as per the terms and conditions of the contract. se.31 of the Indian sale of goods Act, 1930 has provided that it is the duty of the seller to deliver the goods and of the buyer to accept them, and pay for them in

accordance with the terms of the contract of sale. there are three main processes of the performance of a contract of sale.

- Voluntary transfer of delivery of goods.
- Acceptance of the goods by the buyer and
- To pay a price for the goods.

a:t' ljlqm;DalGw s/f/ cGt{ut qm]tf / ljqm]t b'})sf] Ps csf{ k|lt st{Jox? x'G5g . lo b'}) klf] cf cfkm]g] tkm{af6 k'/f ug' { kg]{ st{Jo k'/f ug' { g} j:t' ljlqm s/f/sf] kl/kfngf xf] . s]]tf] :jLsf/ u/]s]f j:t'sf] d'No e'Qfg ub{5 / ljqm]tf] s'g} l9nfO l]gf j:t' q]mtfnfO{ ;dk{0f jf ;'k'b{ ub{5 eg] b'}) klf cf cfkm]g] bfloT]af6 :jtGq x'G5g .

Delivery of goods: - delivery of goods signifies the voluntary transfer of possession of goods to the buyer. The transfer of goods from seller to buyer must be made pursuant to the contract and if contract remains silence the legal provisions come to effect for determining delivery mode. F.Pollock delivery is a voluntary dispossession in favour of another. x:tfGq0f eg]sf] s;af6 :j]R5fk'j{s s'g} ;'Dkg'xf] . se.2(2) of Indian sale of goods Act, 1930 provided that delivery means a voluntary transfer of possession from one person to another. x:tfGq0f eg]sf] cflwkTonfO{ Ps JolQmaf6 csf]{ JolQmdf :j]R5fk'j{s ;'Dkg'xf] .

Modes of delivery-actual delivery-symbolic delivery-constructive delivery or delivery by attornment.

Rules regarding delivery x:tfGq0fsf lgodx?

- 1.types of delivery x:tfGq0fsf] k|sf/
- 2.possession of buyer qm]tfsf] cflwkTo
- 3.delivery and payment concurrent condition x:tfGq0f / e'QmfgL ;d]lt{ zt{
4. effect of part delivery cfFlzs ;'k'b{uLsf] c;/
- 5.application for delivery x:tfGq0fsf] nflu cg'/f]w
- 6.expenses of delivery x:tfGq0f vr{
- 7.place of delivery x:tfGq0f ug' {kg]{ 7fpF
- 8.time for delivery x:tfGq0fsf] ;do
- 9.goods in possession of third person t];|f] JolQmsf] sJhdf /x]sf] j:t'
10. delivery to the carrier or wharfinger jfxs uf]bfd clwsf/LnfO{ x:tfGq0f
- 11.delivery of the wrong quantity unt kl/df0fsf] x:tfGq0f
 - short delivery sd x:tfGq0f
 - excess delivery a9L x:tfGq0f
 - mixed delivery ldl>t x:tfGq0f
12. buyer's right to inspect the goods j:t' lgl/lf0f ug]{ qm]tfsf] clwsf/
- 13.liability of buyer qm]tfsf] bfloTj
14. Instalment ls:tfjGbL

Unpaid seller cbQ ljqm]tf j:t' gub jf pwf/f] b'}) ?kdf ljlqm ug]{ ul/G5 gub ljlqm cGt{ut j:t'sf] d'No t'Gt} r'Qmf ul/G5 eg] pwf/f] ljlqmcGtu{t j:t'sf] d'No s]xL ;do kl5 jf eljiodf r'Qmf ul/G5 . ;fwf/0ftof gub ljlqm cGtu{t cbQ ljqm]tfsf] k|Zg p7\b}g . t/ ljqm]tfnfO{ r]saf6 d'No r'Qmf u/]s]f cj:yfdf ljqm]tf cbt ljqm]t aGg k'U5 . ljqm]tfnfO{ gubdf k'/} d'No r'Qmf u/]s]f cj:yfdf eg] of] k|Zg p7\b}g . pwf/f] ljlqmcGtu{t cfkm'n] j:t'sf] d'No ltg{ sa'n u/]s]f ;dofleq qm]tf] k'/} d'No ltb}{g cyjf tf]lsPsf] ;dofleq laqm]tf] qm]tfaf6 k'/} d'No e'QfgL kfpFb}g jf d'Nosf] hdfgt ;j?k qm]tf] l]lgdoof]Uo ;fwg ljqm]tfnfO{

; 'Dk]sf] cj:yfdf To;sf] cgfb/ x'G5 eg] laqm]tf cbQ ljqm]tf aGg k'U5 . tf]lsPsf] ;dodf cfkmgf] j:t'sf] d'No e'QfgL gkfp] ljqm]tf] cbQ ljqm]tf xf] . cbQ ljqm]tfsf] ;DaGwdf g]kfnsf] s'/f sfg"gn] s'g} s'/f pNn]v u/]s]f kfOb}g . ef/lto j:t' ljqmL P]g sf] bkmf \$%-!_ n] cbQ ljqm]tfnfO{ o;/L kl/efifLt u/]s]f 5 – s'g} qm]tfnfO{ tj cbQ ljqm]tf dflgG5– s= hj j:t'sf] k'/f d'No r'Qmf ul/Psf] 5}g jf d'No r'Qmf ug]{ cfx\jfg ul/Psf] 5}g,v= hj ljlgdokq jf cGo ljlgdo of]Uo ;fwg4f/f zt{o'Qm d'No e'QfgL ul/Psf] 5 / ;f] ;fwg cgfb/ ul/Psf] 5 .

Under the contract of sale of goods, the goods are sold for price. The price is paid either immediately or in future. The price of goods is paid either in cash or in credit. Both the cash payment and transaction in credit are common phenomena in business activities. In the case of cash payment, where the full price is paid immediately at the time of the goods purchased, there is no question of unpaid seller. In the case, where the payment is made by cheque and it is dishonored by bank, the seller arises only in credit seller. when the seller does not get the whole payment from the buyer on the stipulated date or if the negotiable instrument received for payment is dishonoured, the seller is called unpaid seller. The contract act has not mentioned anything in this respect but the Indian sale of goods Act, 1930 has made the definition of the term unpaid seller under se. 45(1) mentioning as: the seller of goods is deemed to be an unpaid seller a. where whole of the price has not been paid or tendered or b. when a conditional payment was made by a bills of exchange or other negotiable instrument, and the instrument has been dishonored.

features of unpaid sellers.

- When the whole or a partial price is not paid on the due date or in time.
- When payment is made in the form of a negotiable instrument and the instrument is dishonoured.
- When the goods are sold on cash term or on credit and he must be unpaid.
- The seller must not refuse to accept the payment when it is tendered from the side of the buyer.

Rights of an unpaid seller cbQ ljqm]tfsf clwsf/

There are two kinds of rights of an unpaid seller,

1. Right against the goods j:t'lj?4sf] clwsf/– the unpaid seller is entitled to enjoy the following rights against the goods whether the ownership passed to the buyer or not.

a. right to lien wf/0fflwsf/ – the unpaid seller has the right to hold the goods in possession and keep them until the price has been paid or tendered. se.47 of the Indian sale of goods act, 1930 mentioned the unpaid seller of goods , who is in possession of them sold. Is entitled to retain them in his possession until the price is paid or tendered. he may exercise this right only in any of the following case

- where the goods have been sold without any condition as to credit,
- where the goods have been sold on credit, but the term of credit has expired,
- where the buyer becomes insolvent.

wf/0fflwsf/ Ps lsl;dsf] clwsf/ xf] . ljqm]tfn] cfkmgf] a:t' qm]tfnfO{ ljlgm ul;/s]sf] cj:yfdf kgL obL j:t' ljqm]tfsf] ;fydf 5 eg] hj;Dd qm]tfn] To;sf] d'No r'Qmf ub}{g tj;Dd qm]tfsf] j:t' qm]tfnfO{ ;'k'b{ gu/L ljqm]tfn] cfkmgf] sJhdf /fVg kfpF5 . ef/lto j:t' ljqmo P]gsf] bkmf \$& cg';f/lgDg ltg cj:yfdf cbQ ljqm]tfn] of clwsf/ pkfju ug{ kfpFb5 –

hxF j:t' gubd} ljqmL ePsf] 5 t/ qm]tfaf6 To;sf] d'No k|fKt ePsf] 5}g, hxF j:t' pwf/f]df ljqm ePsf] 5 t/ e'Qmfg ug'{kg}{ ;dofjlw gfl3;s]sf] 5 / hxF qm]tf lbjflnof x'G5 .

Termination of lien

when he delivers the goods to a carrier for transmission to the buyer without reserving the rights of disposal. hj p;n] qm]tfnfO{ j:t' ;'k'b{uL lbg] p2]Zon] x:tfGq0f clwsf/ cfkm}df g/fvL j:t' s'g} jfxsnfO ;'DkLG5 .

when the buyer or his agent has lawfully obtained possession of the goods. hj qm]tf jf p;sf] clws[t clestf{ jf k|wfgn] sfg"gL ?kdf j:t'pk/ clwsf/ k|fKt u5{ /

when he waives his right of lien over the goods sold. hj p;n] cfkmgf] wf/0flwsf/ sf] clwsf/ kl/Tofu ub{5 .

b. right to stoppage goods in transit j:t' af6f]df /f]Sg] clwsf/ ef/lto j:t' ljqmL ;DalGw P]gsf] bkmf%) cg';f/ of] clwsf/ k|of]usf] nflu, s=j:t' qm]t, laqm]tf jf p;sf] clws[t clestf{sf] sJhdf x'g'x'Fb}g , v=j:t' af6f]df /xg'kb{5 , u=qm]tf lbjflnof ePsf] x'g'kb{5 . This provision is stipulated in se.50 of the sale of goods Act, 1930 of India. An unpaid seller can enjou this right only after fulfillment of the following conditions; a. the goods must be in transit, and b.the buyer must be insolvent, and c.the seller must have parted with the possession of goods.

c. right to re-sale k'g ljlqmsf] clwsf/ ef/lto j:t' ljlqm P]gsf] bkmf %\$ n] o; ;DaGwdf Joj:yf u/]s]f 5 lgDg cj:yfx?df cbQ ljqm]tf] j:t' k'g ljlqmug{ kfpF5 . s= j:t' gf;jfg k|s[tsf] ePdf v=lalqm s/f/df tf]sPsf] ;doleq d'No r'Qmf ug{ qm]tf c;dy{ ePdf u= s/f/dfg} k'g ljlqm ug]{ zt{ pNn]v ul/Psf] ePdf / k'g ljlqm ug]{ hfgsf/L lbPkl5 kgL qm]tf] d'No e'QmfgL ug]{ k|oTg gu/]df

se.54 of the Indian sale of goods Act, 1930 has mentioned the unpaid seller has a right to resell the goods retained or stopped in the following cases; if the goods are of a perishable nature, if the right is expressly reserved in the contract in favour of the seller, and if during exercise of right of lien or right of stoppage in transit the gives notice to the buyer of his intention to resell but the buyer fails to pay the price within a reasonable time.

2.Right against the buyer personally Joltmut ?kdf qm]tf lj?4sf] clwsf/

the unpaid seller is entitled to the following legal remedies against the buyer;

a.right to suit for price d'Nosf] nflu d'4fug{ kfp] clwsf/

b.right to suit for damage if non-acceptance j:t' ;Lsf/ gu/]df lfltk'lt{sf nflu d'4fug]{ clwsf/

c. right to suit for interest Jofhsf] nflu d'4f ug{ kfp] clwsf/

3. Right of buyer against seller ljqm]tf lj?4 qm]tfsf] clwsf/

a. claim for damage b.right to specific performance c.claim for indemnity if breach of warranty cf;jf;g e+uePdf xh{gf dfuug]{ clwsf/ d.suit for anticipatory breach ;do cufj}sf] pn+3g lj?4 d'4f ug]{ clwsf/ / e.claim for interest.

Condition for contract of sale of goods may becomes void j:t' ljlqm ;Djlgw s/f/ ab/ x'g] cj:yf

Some conditions where the contract of sale of goods becomes void are laiddown in se.41 of the NCA. In case of a contract made to sell some specific goods, if the goods are lost or damaged at the time of or before entering into the contract and the seller has no knowledge thereof at the time of contract, the contract is void.

g]kfn s/f/ P]gsf] bkmf \$! cg';f/ s'g} vf; j:t'sf] ljlqmug]{ s/f/ ePsf]df ;f] s/f/ ePsf] ;dodf jf ;f] eGbf cuf8L g} s/f/df pNn]lvt j:t' xfgL gf]S;fgL eO;s]sf] t/ ;f] s'f/ s/f/ ubf{ sf a]nf ljqm]t cfkm}nfO{ yfx ePsf] /x]g5 eg] To:tf] s/f/ ab/ ePsf] dfGg' kb{5 .

Law Relating to Carriage of Goods j:t' 9'jfgL;Fu ;DjlGwt sfg'g

1. Importance and introduction:-

Modern business is based on an exchange system. Means of carriage or transportation is regarded as the backbone of the economic development of any country of the world. Modern economic system is based, mainly on transaction of goods which is also based on carriage. In case the carriage can run effectively, industrial or business sector of the country can increase as well as the foreign trade of the country can expand. As a result it is necessary to make proper legal provision for carriage. cfw'lgs cfly{s Joj:yf d'Votof j:t' sf/f]af/ df cfwf/t 5 . 9'jfgL ;DalGw sfo{ k|efjsf/L ?kdf ;+rfng ug{ ;lsPdf b]zsf] cf}Bf]lus jf Joj;foLs lf]q km:6fpg'sf] ;fy} b]zsf] j}b]lzs Jofkf/ ;d]t lj:tf/ x'b}hfG5 . pBf]u Joj;fo ;+rfng ug{sf] nflu sRrkbfy{sf] cfj:os kb{5 .o:tf] sRrf kbfy{sf] 9'jfgL dfnj:t' cf];f/ k;/ ug{sf]nflu 9'jfgLsf] cfj:ostf kb{5 .

The carriage Act, 1865, Railways Act, 1890, Bill of lading Act, 1856, Carriage of goods by sea Act, 1925, Merchant shipping Act, 1963, Marine Insurance Act, 1963 have arranged laws for their certain purposes in India. When

the Indian laws are seemed to be inadequate in that effect, the Indian courts also adopt principles of English laws and the rules of equity and good conscience.

Nepal has also various laws in this regard. the Necessary service Discharging Act, 2014, Civil Aviation Act, 2015, Internal postal Materials Act, 2019, Railway Act, 2020, Nepal Shipping Act, 2027, Nepal vehicle and transport management Act, 2049 and contract Act, 2056 etc. have arranged laws for their certain purpose. But they are not sufficient and should be codified with necessary amendment.

The relating to carriage may play a positive role to manage carriers business, and carrier business is the most important activity of today's business, which can lead the whole business to stability and development. The Contract Act, 2056 deals with a little bit more essential provisions in comparison to other Acts, which for the first time in Nepal has attempted to define carrier and stipulate provision regarding liabilities of the carrier. In general the following points can be noted regarding the importance of a carrier.

1. law of carriage systematizes the business affairs
2. to manage the rights and duties of carriers
3. Backbone of trade
4. Easiness in transactions
5. It regulates the behaviour of carrier and owner of goods
6. to settle disputes legally
7. to help the national economy prosper
8. to make easier international trade.
9. to give stability to the market price
10. to protect passenger interest.
11. to protect consignee

2. Meaning and Definition of carriage/ carriage contract

Carriage means the act of carrying goods from one place to another. It is a branch of a business. Carriage is a branch of bailment. Carriage is the most important basis for the management and regulation of a business property. It is the factor of a business which helps to mobilize labour, raw materials, finished goods, tools and machinery. Modern business is based on the system of exchange or transportation. NCA SE.65-70 contains some provisions in this regard. Se.65 (1) of NCA has provided that- A contract of carriage is deemed to have been concluded if it provides for transportation of goods from one place to another. The same Act se. 65(2) further defines that- the receipt to be issued by the carrier to the owner of the goods for the purpose of carriage shall be recognized as the proof of contract of carriage between them. Sub se.2 of se.65 further explanations - the term carrier means a person providing the service of a carrier except air or sea carrier and the term includes a person operating the carrier or transport business through inland waterways or ropeways or through animal or any other means.

offtoft afx]ssf offtoft ;+rfng ug]{ jf To:tf] sfo{sf] Joj;fo ug]{ JolQm ;Demg'kb{5 / ;f] zJbn] cGtl/s hnofttoft jf /f]kj] jf hgfi/ dfkm{t jf cGo s'g} lsl;dn] 9'jfgL Joj;fo ;+rfng ug]{ JolQmnfO{ ;d]t hgfpFb5 .

thus, a person or firm or an organization that, by an expressed or implied contract, with or without remuneration or fare, carries goods or passengers by land or inland waterways is called a carrier.

_shipper/ consigner k]]ifs dfn;fdfg k7fpg] JolQm, consignee dfn;fdfg kfpg] JolQm, carrier 9'jfgLstf{ / passenger x'G5g _

Sailent features of carriage

- Carriage contract may also be incorporated in the bill or receipt. 9'jfgL s/f/n] ljn jf /l;bnfO{ kgL hgfpFb5.
- Carriage may be internal or external.
- Carriers may be either of goods or passenger.
- A carriers may be any person or firm or organization.
- Carrying services are provided through land, sea and air routes.
- Generally, acts of a carrier are performed by the carriers prescribed in the contract.
- carriers may be private or public.

2. Classification of carriers' jxfssf] jlu{s/0f

Nepal vehicle and transport management Act, 2049 has classified carrier into 6 categories. They are; a. public carrier b. private carrier c. tourist carrier d. government carrier e. company carrier and f. diplomatic carrier.

Carriers can be classified from the different points of view. Here, carriers are classified on the basis of the following points of view.

1. on the basis of fees z'Nssf] cfwf/df
 - a. Nongratuitous carrier;;'Ns jfxs
 - b. gratuitous carrier lgz'ns jfxs
2. on the basis of subject matter ljifo j:t'sf] cfwf/df
 - a. carrier of passenger
 - b. carrier of goods
3. on the basis of service ;]jfsf] k[s[ltsf] cfwf/df
 - a. common/ public carrier
 - b. private carrier

Private carrier-

Private carrier is one who does not do regular business as a carrier but occasionally carry goods for money. The private carrier does not carry the goods as a regular business. It uses to carry its own goods but he may also carry the goods of others for money. He could not be compelled to carry the goods of the others. It is his discretions whether or not to carry the goods of others. cfkmgf] lg]h k[of]hgsf] nflu Ps 7fpFaf6 csf]{ 7fpFdf dfn;fdfg Nofpg] n}hfg] sfo{ ug]{ jfxsnfO{ lg]h jfxs elgG5 .o:tf] jfxsn] gfkmsf] p2]Zon] jf Jofkfl/s k[of]hgsf] nfuL dfn;fdfg 9'jfgL ;DalGw sfo{ ub}{g . g]kfn s/f/ sfgg] o; ;DaGwdf kl/efiff ub}{g . ef/lto sf"g cg';f/ lg]h jfxs eg]sf] To:tf] jfxs xf] h;n] jfxssf] ?kdf lgoldt Joj;fo ub}{g t/ slxn]sfFxl ef8f lnP/ c?sf] dfn;fdfg9'jfgL ub{5 . a private carrier is one who does not do regular business as a carrier but occasionally carries others goods for money.

Common/public carrier:-

The carrier who carries goods from one place to another for a fixed fee without discrimination is called common or public carrier. Common carriers are those who undertake to carry persons or goods, without any discrimination, of all who chose to employ it. Sec.2 of Carrier Act of India defines common carrier as a person, other than the government, who transport goods, as a business for money over land or inland waterways, without discrimination between different consignors. To carry the goods regularly is its business and it has fixed and regular route to carry goods.

In the context of NCA on law of carriage, we can not include carriage of passengers. In the reference of NCA common carrier is one who undertakes to carry the goods for some consideration indifferently who may chose to employ him.

From the definition mentioned above, it is clear that common carrier is a kind of carrier who is open for all people, who are ready and willing to pay fee for service.

Characteristics of common carrier

1. Common carrier carries only goods not passengers, the matter is governed by the separate transport Act.
2. A public carrier carries goods by Land Sea and air.
3. A firm or an individual or a company may be a public carrier. But a Gov. Organization like post office does not come under the law of public carrier.
4. A public carrier provides services for remuneration.
5. No discrimination
6. A common carrier always carries goods through a regulated route. He is not authorized to change route.

Distinction of public carrier and private carrier.

Public carrier

1. It carries goods regularly.
2. Public carrier provides services indiscriminately for equal fare.
3. Normally, it carries only goods,
4. it always carries goods through customary route.
5. Public carrier is regulated and controlled by the National Carriage and Transportation Act, 2009.
6. Public at large.

Private carrier

1. He carries goods of other only casually or occasionally.
2. Private carrier does not do so.
3. He carries both either goods or passengers.
4. He carries goods through different route.

5. Private carrier is regulated by the agreement between the parties and the contract Act.
6. with limited persons.

Rights duties and liabilities of common carrier.

Rights:-

The common carrier shall have the following rights.

1. Right to claim/ charge fees z'Ns dfUg] clwsf/
2. Right to refuse to carry goods 9'jfgL ug{ OGsf/ ug]{ clwsf/
3. Right to sell ljlqm ug]{ clwsf/
4. Right to lien sJhfug]{ clwsf/
5. Right to claim compensation lfltk'lt{ bfjL ug]{ clwsf/
6. Right to take necessary step cfj:os Joj:y fug]{ clwsf/
7. Right to limit the responsibility lhDd]jf/L l;ld tug]{ clwsf/

Duties of a public carrier:

A common carrier is bound to perform some duties. NCA has also recognized some duties. Generally, he has the following duties in accordance with law. They are,

1. carry goods with safety ;'/lft tj/af6 j:t' 9'jfgL ug'{
2. carry goods without discrimination l;gfe]befj j:t' 9'jfgL ug'{
3. delivery goods within specific time lglZrt ;dodf j:t' k'/ofpg'
4. use traditional route/ prescribed place k|rlnt dfu{ k|of]u ug'{
5. duty follow the instruction cfj:os lgb]{zg kfngf ug'{
6. duty to follow the necessary notice cfj:os hfgsf/L lbg'
7. liability of compensation lfltk'lt{ lbg' kg]{ bfoLTj
8. duty to delivery goods in the destination uGtJodf dfn;fdfg k'/ofpg] st{Jo

liability of a public/common carrier

According to the NCA 2056 chapter 9 se.66-70 the following liabilities should be fulfilled by a public carrier:

- 1.to carry goods as specific place se.66 (1) lgwf{l/t :yfgdf j:t' 9'jfgL ug'{
- 2.deliver goods within a prescribed time se.66(3) lgwf{l/t ;do leq dfn j:t' x:tfGq0f ug'{
3. Liability to pay compensation se.66(2) lfltk'lt{ ltg'{kg]{ bfoLTj
4. loss caused to the passengers or goods
5. liability to insurance
6. liability of the first carrier se.67 kxLnf] 9'jfgL stf{sf] lhDd]jf/L bkmf ^&
- 7.liability in case of negligence se.69 nfk/jfxL u/]df bfoLTj
8. compensation upto ten thousand se. 68 b;xhf/ ;Dd lfltk'lt{ lbg'kg]{

GOODS are exemption from the liability 9'jfgL stf{ bfoLTjaf6 d'lQmx'g] dfnj:t'

se. 68(2) of the NCA has provided that a list of valuable goods and the conditions at which the carrier should not liable, except otherwise agreed in the contract, to carrying the following goods;

1. Gold, silver, diamond, jewellery valuable goods etc.
2. Negotiable instruments, securities document registered by offices certificate etc. ljl;gdo ;fwg / c88fdf kf; ePsf] lnavt cfbL
3. Coins bank note and postal stamps
4. Fish meat fresh fruits and vegetables.

5. Petroleum products,
6. Insecticides goods,
7. Curio goods and handicrafts goods etc.
8. Glass or goods made of glass,
9. Wildlife and domestic animals etc.
10. Arms goods and guns etc.
11. Radio, TV computer and its parts etc.
12. The goods which the consigner has to declare before their transportation but has not clearly declared. 9'jfgL x'g' cufj} dfn;fdfgsf] wlgn] 3f]if0ff ug'{ kg}{ dfn;fdfg egL k|rlnt sfg"gd f]lsPsf] dfn;fdfg

Termination of carriers liability

according to se.70 of the NCA except when otherowise provided for in the contract, the lilbility of a carrier terminates in any of the following ways.

1. By transfer/ delivery of goods
2. BY goods back by consigner k[j]fsn] j:t' lkmtf{ lnP/
3. By fundamental change in the situation/ duty to the supervening impossibility

4. Carriage by sea or contract of affreightment hndfu{ af6 dfn;fdfg 9'jfgL ug}{ s/f/

carriage of goods by sea mens that act under which the goods, human beings and animals are carried through sea route by hiring the entire or a part of a ship or vessel. It is also a mode of transportation. The sea route is popular in the world for carring goods from one place to another. There are several legal framework have been made by the different countries for regulating the carriage of goods through route. The carriage of goods Act,1925, the Bill of lading Act, 1856, the merchant shipping Act, 1958 and the Marine Insurance Act, 1963 ar in existence in India for regulating the sea route. In Nepal maritime law, 2027 has been enacted. But the Nepalese Act is not sufficient in this regard. ;fd'lb|s dfu{af6 ul/g] 9'jfgLnfo{ ;fd'lb|s dfu{4f/f 9'jfgL elgG5 . lgod adf]lhdsf] ef8f freight lnO{ ;fgf 7'nf hxfh 4f/fdfn;fdfg lhj hGt' jf dflg;x? o:tf] dfu{4f/f cf];f/ k;f/ ug}{ ul/G5 . ljZodf clwsfF;tM of] dfu{ k|of]u ul/Psf] kfOG5 .

Contract of Affreightment: hxfhsf] ef8f ;DalGw s/f/M

Affreightment means hiring of a vessel or a ship and the contract of affreightment is a contract under which the goods are carried through sea route. When two parties agree to carry goods by sea route from one place to another is known as contract of affreightment. In general there are three parties under such a contract namely the ship-owner, charter or consignor and consignee. ;fd'lb|s dfu{4f/f ;fdfg 9'jfgL ug}{ ;DaGwdf ul/g] ;Demf}tfnfo{ hxfhsf] ef8f ;DalGw s/f/ elgG5 . obL sf]xL kfgL hxfhaf6 ofqf ug{ jf ;fdfg 9'jfgL u/fpg rfxG5 eg] lghn] hxfh sDdgL ;Fu s/f/ ug'{kb{5 h;nfO{ hxfhsf] ef8f;DalGw s/f/ elgG5 . o;df ltg klfx? x'G5g . hxfh dfnLs dfnkfpj] / k[j]ifs .

Types of contract of affreightment

The contract of affreightment can be classified in two categories as given below.

1. Charter party> a charter party is one of the forms of contract of affreightment. In the simple meaning of charter party, a charter party is a formal document containing the terms of the contract between the parties. IN ouside nepales law has not

defined the term charter party. According to Indian law- a charter party is a contract of affreightment entered into for hiring the entire ship or a principal portion thereof, to carry goods from one place to another through sea route. the charter party must be made in a written form which contains the terms between the agreed parties i.e. name and Nationality of ship etc. charter party may be of two types, namely,

a.time charter party

b.voyage charter party

c. charter party with demise or pledge

d. Charter party without demise

Charter party with demise or pledge: The charter party is a contract of affreightment entered into for hiring the entire ship or a principal portion thereof, to carry goods from one place to another through sea route. The charter party must be made in a written form which contains the terms between the agreed parties i.e. name and Nationality of ship etc. Charter party may be of two types, namely, a. time charter party, b. voyage charter party, c. charter party with demise or pledge, d. Charter party without demise.

Clause and conditions of charter agreement

Charter party

a. express clause

1.name and address of the contractual party.

2. name of the ship,

3.class of the ship,

4. nationality of the ship,

5.possition of ship

6. place of ship,

7. seaworthiness of ship

8. port of departure

9.measurement of ship and its capacity

10. description of the goods,

11. legality of goods

12. delivery of whole goods.

13. payment of freight

14. ley days demurrage

15. condition as to perils of the sea.

14. condition as to lien

17. Condition as privilege

18. Right and duties of master or captain.

b. implied warranties

1. the ship is seaworthy at the commencement of the voyage, i.e.reasonably fit

2. The ship should be ready to commence the voyage.

3. The ship shall carryout with all reasonable care and diligence.

4. The ship should not incorporate illegal or dangerous goods and,

5. The ship should follow the customary route except the situation requires changing the route for safety, repairing etc.

2. Bill of Lading

The bill of lading is another type of contract of affreightment. It is a kind of receipt of goods, delivered to a ship for a carriage. The receipt is given to the goods owner from the ship owner or a carrier after loading. It will have three copies. Each of them is for the ship owner, goods owner and the consignee. Thus bill of lading is document in writing, signed by either the ship owner or his agent on his behalf. It contains various terms and condition of carriage of goods, like name of ship, freight, date of receiving of goods, condition, quantity and particular sign of goods etc. It is generally used for the purpose of carrying many consignors' goods in small quantity through a general ship. It is form of a common carrier. He takes the goods or passengers in his ship and bears responsibility till his duty comes to end.

- it is an evidence of the received goods
- it is a document of title over the goods
- it is an evidence of the contract of affreightment
- it is a semi-negotiable instrument

Kinds of bill of lading

1. clean and dirty bill of lading
when goods are in the goods order and condition the bill of lading is the clean bill of lading. when the goods are in bad condition, the issued bill of lading is termed a dirty bill of lading.
2. Through bill of lading
when the goods are to be carried partially by land, and other means of transportation, such as sea, it is called a through bill of lading.
3. Received bill of lading- an acknowledgement of receipt of the goods by the shipping company for carriage in a particular ship is known as a received bill of lading. It is not a proper bill of lading, there may be obtained shipped bill of lading and may have name of the ship and date of shipment of the goods.

Difference between a charter party and a bill of lading.

Charter party

1. it is a formal document of contract.
2. it is not a document of title of any goods.
3. it contains all the terms of the contract between the parties.
4. a charter parties will be made in two copies.
5. the stamp is fixed on the top of the charter party.
6. it is not the evidence of received goods.
7. in case of demise(pledge) demise charter the ship-owner may lose his contract over the ship.

Bill of lading

1. It is receipt for the goods delivered to a ship for carriage.
2. It is a document of title,

3. It may or may not contain any terms.
4. A bill of lading will have three copies each for the ship-owner, consignor and the consignee.
5. The stamp is fixed at the bottom of the bill of lading.
6. It is the evidence of received goods.
7. In this case the ship-owner never loses his control over the ship.

some terminology relating to ship kfgL hxfh ;Fu ;DalGwt cfwf/e't zJbfjnLx?

1.salvage money d'IQm/sd

2.primage - ship owner n] captain nfO lbg] l6k;

3.demurage ljnDa z'Ns

4.lay days nf]8 cg nf]8ug]{ lbg

5.perils of the sea ;fd'lb]s h]flvd

6.Master of ship- master is the person appointed by the ship owner of the ship for the purpose of managing carriage of goods by ship. As an agent, the master has authority to act on behalf of the principal, owner of the ship.

Rights of the master of ship

- 1.right to sign bill of lading hxfhL l]N6Ldf b:vtv ug]{ clwsf/
- 2.right to transfer the goods dfn;fdfg ;fg]{ clwsf/
- 3.right to throw goods dfn;fdfg km\ofSg] clwsf/
- 4.right to make salvage agreement gfz/lf0f ;Demf}t fug]{ clwsf/
- 5.right to sell
- 6.right to change customary route k|rlnt dfu{ kl/jt{g ug]{ clwsf/
7. right of bottomary bond hxfhL sa'lnotsf] clwsf/ k};f gePdf, dfnLsnfO ;"rgf lbg g;s]df
- 8.right of respondentia bond dfn;fdfg aGwssf] clwsf/

Duties of the master of ship

- 1.duty to take proper care
- 2.duty to follow customary route.
- 3.duty to give proper timeplrt ;do lbg'
- 4.duty to obtain instruction lgb]{zg kfngf ug'{
- 5.duty to deliver the goods dfn;fdfg x:tfGq0f ug'{
6. duty to do necessary things cfj:os sfd ug'{

Carriage by air xjfO{ dfu{ 4f/f 9'jfgL

dfn;fdfg 9'jfgLsf ljleGg dfu{x?dWo] xjfO{ dfu{ kgL Ps dxTjk'0f{ dfu{xf} . xjfO{dfu{4f/f dfn;fdfgsf] 9'jfgL eGgfn] xjfO{hxfh jf ljdffgsf] k|of]u4f/f dfn;fdfgsf] 9'jfgL ug]{ sfo{nfO{ hgfpFb5 . d'Votof xNsf PjF ;fgltgf cfsf/sf ax'd'No ;fdfgx? 9'jfgL ubf{ xjfO{dfu{sf] k|of]u ul/G5 lsgeg] xjfOhxfhaf6 dfn;fdfg 9'jfgL u/fpg' a9L ;'/lft x'G5 / ;fy} w/} l56]f kgL ;fdfg k'Ub5 .x'gt xjfO{dfu{4f/f dfn;fdfg 9'jfgL ubf{ w/} ef8f nfU5 t} kgL ;8s offtoftsf] /fd]f] ljsf; e}g;s]sf xfd]f] h:tf] e'kl/]li7t PjF kxf8L w/ftn ePsf] b]zdf xjfO{dfu{sf] a8f] dxTjk'0f{ :yfg 5 . 9'jfgL ls t cfGtl/s ls t afx\o x'g ;Sb5 . To;sf/0f xjfO{ dfu{4f/f 9'jfgL;Fu ;DalGwt sfg" g cGt{ut cGt/fli6o sfg"gsf lgodx? kb{5g ;g !(@{sf] jf;f{ ;GwL nfO o;sf] pbfx/0fsf] ?kdf lng ;lsG5 lsgeg] o; ;lGwnfO{ xjfO{dfu{4f/f 9'jfgL;Fu ;DalGwt kxLn]f sfg"gL k|of; dfgLG5 . o; ;lGwdf ;fd]n e} x:tfllf/ ug]{ b]zx? pRr s/f/sf klfx? sxlnG5g eg] of] ;lGw;Fu ;Dalwt kl5sf pkn]vdf x:tfllf/ ug]{ b]zx?nfO{ kgL ;f]xL klfsf] ?kdf dfGotf k|fKt x'G5 . jf;f{ ;GwLsf] cfwf/df ef/tn] xjfO{dfu{4f/f 9'jfgL P]g, !(#\$ hf/L u/]s]f lyof] eg] jf;f{ ;lGwnfO{ !(%%sf]x]u pkn]v 4f/f ;+zf]wg ul/of] h;n] ubf{ ef/tn]

!(\$ sf] ;f] P]gnfO{ vf/]h u/L xjfO{dfu{4f/f 9'jfgL P]g, !(&@ nfu' u/of] hf] s[oflzn 5 . g]kfnn] kgL jf;f{ ;lGwk|lt cfkmgf] ;xdlthgfO{ x:tlf/ u/]sf 5 . t/ xjfO{ dfu{4f/f 9'jfgL ug]{ l]ifodf g]kfndf s'g} l]z]if sf" g 5}g jt{dfg s/f/ P]gn] 9'jfgL;Fu ;DalGwt s]xL lgodx?sf] Joj:yf u/]sf 5 t/ xjfO{ dfu{4f/f 9'jfgLsf] ;DaGwdf of] P]g kgL df}g b]lvG5 . t}kgL ;GwL P]g @)\$& sf] bkmf (cg';f/ g]kfn klfePsf cGt/f{li6o ;lGwsf] Joj:yf / g]kfnsf] k|rlnt sf'g cfk;df aflemPdf afemLPsf] xb;Dd ;lGwsf] Joj:yfn] dfGottf kfpF5 . o;sf] cnjf g]kfn gful/s p8\og P]g @)!% / g]kfn xjfO P]g @)!(s[of;LNf /x]sf] 5 .

Carriage by air is also a mode of transportation. The function of carriage of goods by an aircraft is the carriage by air. It refers to carriage of goods or passengers through air routes or airways by aircraft. The law relating to the carriage by air is guided by the directions of international conference of Warsaw-1929, and Hague protocol 1955. Both of the conferences are the source of international law of air carriers. Our neighbour country India enacted the carriage by air Act, 1934 for this purpose with the base of the rules as agreed at the convention held in warsa in 1929. As amended in the convention by the protocol adopted in Hague in September 1955. INDIA has issued the new carriage by air Act, 1972 replacing the former Act.

In Nepal the civil aviation Act, 2015 and Nepal airlines ACT, 2019 have been placed as Nepalese law to some extent in this regard. But no separate act has been yet enacted in Nepal. The NCA has dealt with some rules regarding carriage but it is also silent about carriage by air whether in respect to domestic carriage or international carriage. Nevertheless it may be noted that Nepal is also one of the high contracting parties to the Hague protocol. As consequences the rules of the Warsaw convention are applicable in Nepal as well.

he goods carriage freighter is designed and managed only for carrying goods. It does not carry passengers. It can carry not only bulky goods but also heavy goods, like truck, bus, tank, baily bridge etc. where small goods are transported with passenger, they are carried by the same carrier. The passenger is given a baggage ticket. There are two copies, own of them is for a passenger or owner of the goods and the other is for the carrier company. The passenger goes to his own seat and the goods are sent to be kept in the luggage space of the place.carriage by air may be either internal or external. The involvement of stopping at the territory of another country is unavoidable in international carriage. Carrying of goods from one place to another place of the world through airways or by aircraft by suing the territory of the different countries is known as the international carriage.

Document relating to carriage by air xjfO dfu{4f/f 9'jfgL ;DalGw k|n]vx?

Following kinds of documents are related to the carriage by air.

1. Airway bill or air consignment note xjfO 9'jfgL /l;b jf xjfO{ k|]ifs kq

It is one of the documents relating to carriage by air. It is known as the air consignment note. If a person wants to dispatch goods by airway, he has to submit a document to the airway service provider or carrier mentioning details thereof. The airway bill incorporates the various descriptions concerning to the terms and conditions of the contract dispatching and receiving the goods to carry. Generally, following descriptions are contained by such bill.xjfO{ k|]ifOfkq dfnjxfs

ljdfg4f/ dfn;fdfgsf] 9'jfgL;Fu ;DalGwt 5 . dfnwgL cfkm' ofqf gu/L cfkmgf] dfn;fdfg dfq 9'jfgL u/fpg rfxG5 eg] lghn] dfn;fdfgsf] ljj/0f e/L ljdfg jfxs ;dlf Pp6f k|n]v k]z ug'{kb{5 . To;nfO{ xjfO{ k|]if0fkq elgG5 . o;nfO{ xjfO{ 9'jfgL /;Lb kgL egLG5 of] ltg k|lt agfOG5 . kxLn]f] k|lt ljdfg sDkgLn]fO{ lbOG5 . bf];|f] k|lt ljdfg sDdgL / k|]ifssf] ;d]t x:tlf/ u/L ;fdg a'lemnLg] JolQmconsignee nfO{ k7fOG5 / t];|f] ljdfg ;jjaf6 ;dfg a'lemnPFeGg] Joxf]/f;xLtsf] x:tlf/ u/fO{ k|]ifsconsigner :joFn] lnG5 . o;df lgDgs'/fx? pNn]v ul/Psf] x'G5 .

1. The name and address of the first carrier, the consigner and the consignee.
- 2.name of the places of departure and destination or arrived,
3. name and address of the consignor
- 4.Carrying route period and stopping places etc.
5. Nature of the goods and the packaging method.
6. condition of the goods etc.

the airway bill or air consignment note is the primary evidence of goods and contract of carriage and it can be issued making negotiable.

2. Passenger ticket-

The passenger ticket is a document issued by the airway service or company to the passenger traveling by plane.The passenger should buy a ticket by paying fare.

The passenger ticket is itself a document of contract of carriage. The issued ticket contains various descriptions concerning to the travel. Generally it must contain the following descriptions.xjfO{ofqfsf nflu xjfO{;jjf ;Grfns jf sDkgL4f/f hf/L ul/Psf] l6s6 k|To]s ofq'n] lsGg'kb{5 h;nfO{ ofq' l6s6 elgG5 . of] l6s6 ofq'x'sf] 9'jfgLsf] ;DaGwdf xjfO{ sDkgL / ofq'ljrsf] s/f/sf] ?kdf /xg] x'Fbf o;df lgDglnlvt ljj/0fx? pNn]v u/LPsf] x'G5 .

- Name and addresses of the airway company and the passengers,
- Name and number of the aircraft,
- ticket issued date,
- Name of the departure and arrival places,
- the liability of the airway company towards the passengers and goods etc.

3. Luggage ticket

The ticket that is issued by the carrier to a passenger with a permission to carry goods by air is called luggage ticket and that is regarded as a document of contract. it is in duplicate, one is for the consignor or passenger, the other is for the carrier. It is a primary evidence of the registration of goods and of the terms and conditions of the contract of carriage. Generall, the luggage ticket must contain the following description, cfkmgf];fydf /fVg kfpg] ;fgfltgf ;fdfgafx]s cGo ;fdg 9'jfgL u/fpg rfxg] JolQmn] ljdfg ;jjf nfO{ ;fdg a'emfpl5 ;f] a'emL ljdfg ;jjf4f/f lbO{g] l6s6nfO{ ;fdg l6s6 elgG5 . of] b'O{ k|lt agfOG5 Psk|lt ljdfg ;jjf cfkm}n] /fVb5, csf]{ k|lt k|]ifsnfO{ lbG5 . o;df ofq' l6s6df pNn]lvt ljj/0fsf ;fy} lgDglnlvt ljj/0fx? kgL v'nfOPsf] x'G5 .

- the namber of luggage ticket,
 - a statement that the bearer will get goods,
 - place of departure and arrival,
 - The number and weight of the packages,
 - maters relating to liability of air services,
 - The number and weight of the packages etc.
- liabilities of the carrier by air xjfO jxfssf] bfoLTj

1. compensation in case death or bodily injured of the passenger of the ship
2. liability in case of damage of luggage.
3. liability in case of delay

Negotiable instruments

1. Definition of negotiable instrument -

The term negotiable instrument literally means a written document which creates a right in favor of some person and which is freely transferable. These instruments have gained prominence as the principal instruments for making pass on freely from hand to hand and thus form an integral part of the modern financial transactions.

The negotiable instruments Act, 1881 does not define a negotiable instrument and section 13 merely states that A negotiable instrument means a promissory note, bill of exchange or cheque payable either to order or to bearer.

The contract Act is silent regarding the negotiable instrument, though it comes under the performance of a contract. Sec. 2(e) of NIA 1881 defines it thus promissory note and bill of exchange are said to be negotiable instrument. Cheque is included in bill of exchange. Sec. 2(v) of NIA Act 1881 defines cheque means a bill of exchange drawn on any bank ordering it to make payment on demand. Sec. 2(r) of NIA Act defines negotiable means the act transferring an instrument to a person having the right to hold Negotiable instrument enabling him or her to become a bearer. Sec. 2(s) of the same Act defines Negotiable instrument means letter of credit, bill of exchange.

2. Salient features or characteristics of a negotiable instrument

1. a negotiable instrument must be easily transferable and it may be payable either to bearer or to order of the named payee.
2. a holder in due course can sue on the instrument in his own name, he need not depend upon another's title....Nor is he under any duty to justify his title in the first instance.
3. An instrument must be in writing.

4. The negotiable instrument should not be conditional.
 5. There must be clear and specific period of time for its payment.
 6. it must be signed by the maker or drawer.
 7. Legal presumption- there is presumption that the instrument was evidence in all the negotiable instrument.
- Consideration
 - Date of preparation
 - Time of transfer
 - Holder in due course
 - Date of acceptance
 - Endorsement

3. Kinds of negotiable instrument.

A. negotiable instruments by statute or law- promissory note, bill of exchange, cheque etc.

Cheque-

Cheque is one of the important negotiable instruments. It has been used since long as a method of payment for settling accounts in business transactions. It was originally spelt as check, carrying the meaning of a written order on a bank directing it to pay a certain sum of money. Cheque is an order on a bank purporting to be drawn upon a deposit of funds for the payment of a specified sum of money on presentation, to the person named in the document, or to him on his order or to the bearer. It is made payable instantly on demand.

se. 2 h of Negotiable Instrument Act, 2034 defines a cheque thus- a cheque is a bill of exchange which is drawn upon a banker to pay on demand. NRB Act 2058 has mentioned that cheque means a bill of exchange drawn on any bank ordering it to make payment on demand.

se. 6 of the Indian negotiable instrument Act, 1881 states that A cheque is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form.

Thus a cheque is a negotiable instrument like a bill of exchange. It has two distinctive features in comparison to other instruments:

- It is always drawn on a ban.
- It is always payable on demand.

Essential features of cheque

1. A cheque must fulfil all the essentials of a bill of exchange.
2. A cheque is an unconditional instrument.
3. A cheque is payable on demand.
4. A Cheque is drawn only on a bank, where the drawer has managed an account for collecting money.

Types of Cheque

1. Open cheque- open cheques are paid over the counter of a bank. They need not be put through the bank account. Such types of cheques have no marking. Therefore, anybody can change this cheque into cash. The open cheques can be categorised into two kind's a. bearer and b.ordered.

Bearer cheque- the person who bears the cheque may encash it over the counter of bank. The bearer's signature is not necessary in the cheque. It is more risky.

Ordered cheque- where a cheque is transferred with the endorsement on the back to order a payment by the person whose name is prescribed or transferred by him and that becomes holder in due course that is the ordered cheque.

2. Crossed cheque:- With a view of avoiding the risks of open cheque and protection of right of owner of the cheque is the main motto of the crossed cheque system. Crossing the check is the direction to the banker not to pay the cheque in the bank counter. The crossed cheque must be put through a bank account, which can provide a protection and safe guard to the owner and the receiver of the cheque. Such a mechanism of crossed cheque system is more helpful to find out the culprit in the course of business.

a. general crossed cheque: where two parallel lines are drawn across the face of the cheque that is the symbol of the crossed cheque. Such a cheque is not encashed by the paying banker and proceed proceed in any banker.

b. special crossed cheque:- when a banks name is put in the crossed line of the cheque, it is known as a special crossed cheque. Such types of cheques are possible to collect only in the bank named in the crossed cheque.

c. Account Payee Cheque: Where 'A/C Payee' is termed between the parallel line of the cheque that is known as account payee cheque. Such type of cheque is collected in the account of the same name of holder in due course. This type of negotiable instrument is more useful and practical in the modern business.

Bank Draft

Bank draft is also one of kinds of negotiable instrument like a cheque. When a bill of exchange is drawn by a bank it is called a 'Banker's Draft'. the bank draft may be of two types:

- A bank draft is an order issued by one branch to another branch of the same bank, and
- A bank draft issued by one bank to another bank.

Such an instrument is very much like a cheque with the following distinct features:

- It is drawn only by a bank, upon its own branch or upon another bank.
- It can not be easily stopped or countermanded.
- It can not payable to the bearer of the cheque.
- It is payable on demand.
- IT is one of the safest instruments for money.

Promissory Note:-

Se. 4 of the Indian negotiable instruments Act, 1881 states that A promissory note is an instrument in writing (not being a bank-note or a currency note) containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument. se.2 (f) NIA Defines A promissory note is an instrument in writing, except government note or bank currency, containing an undertaking to pay, without any condition, certain sum of money to any particular person referred to in such instrument or to the person ordered by such person or to the bearer of such instrument on a fixed date or on demand. Thus, a promissory note contains a promise by the debtor to the creditor to pay a certain sum of money after a certain date. Hence, it is always drawn by the debtor. He is called the maker of the instrument.

Essential elements of a promissory Note;

a. must be in writing, b. promise to pay, c. definite and unconditional, d. signed by the maker, e. certain parties, f. certain sum of money and g. promise to pay money only. i.e. I promise to pay B or order rs. 500 with 10 percent interest rate for his consideration.

Bill of exchange:-

Se. 2(g) of NIA defines, Bill of exchange means an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand, or at a fixed or determined future time, a certain sum of money to or to the order of a specified person or to the bearer of the instrument.

section 5 of the Indian negotiable instruments Act, 1881 states that A bill of exchange is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of , a certain person or to the bearer of the instrument. A bill of exchange is always drawn by the creditor on the debtor. There are three parties in the bill of exchange. a. drawer, b.drawee and c.payee. The person who draws it, is called the drawer and the person on whom it is drawn, called the drawee or acceptor and the person to whom the amount is payable is called the payee. It must be in writing. The order must be to pay money and money only.

The essential requirements of a bill of exchange may be stated briefly as below.

1. the bill of exchange must be in writing. it should not be oral one.
2. the bill of exchange must contain an express order to pay.
- 3.it must be signed by the drawer.
4. it must contain an order to pay in terms of money only.
5. the order to pay must be unconditional etc.
6. THE money must be payable to a definite person.

Distinction between promissory note and bill of exchange

Promissory note

- 1.there are only two parties i.e. the maker or debtor and the payee or creditor.
- 2.it cannot be made payable to the maker himself.
3. it contains an unconditional promise by the maker to pay to the payee or his order.
- 4.it does not require any acceptance.
- 5.there is no question of conditional acceptance.
- 6.the maker stands in immediate relationship with the payee.
7. the liability of the maker is primary and absolute.
- 8.if it is dishonoured, no notice of dishonored, no notice of dishonour is to be given to any person.
- 9.if it is dishonoured, it is not required to be protested.

Bill of exchange

1. there are three parties i.e. the drawer, drawee and payee.
 2. the drawer and the payee or drawee and payee may be same person.
 3. there is an unconditional order to the drawee to pay according to the drawer's attention.
 4. it must be accepted by the drawee before presentation for payment.
 5. it can be accepted conditionally.
 6. the maker or drawer of an accepted bill stands in immediate relationship with the acceptor and the payee.
 7. the liability of the drawer is secondary and conditional.
 8. if it is dishonoured, due notice of dishonour is to be given by the holder to the drawee and the intermediate indorsers.
 9. foreign bills must be protested for dishonor.
- distinction between cheque and bill of exchange

Cheque

1. it is always drawn on a bank.
2. it is always payable on demand.
3. It is always drawn on a printed form.
4. The drawee(banker) need not accept a cheque.
5. it is always supposed to be drawn against the funds in the hands of the banker.
6. the liability of the drawer continues for 6 months.
7. it is free from stamp duty.
8. it is not drawn in sets.
9. it may be crossed to ensure safety.

bill of exchange.

1. it may be drawn on any one, including a banker.
2. it may be payable after a certain period or on demand or on sight.
3. it need not be drawn on a printed form.
4. acceptance by the drawee is essential.
5. there is no such supposition.
6. unreasonable delay in the presentation will discharge the bill.
7. it is subject to ad valorem duty.
8. foreign bills are always drawn in sets.
9. it cannot be crossed.

Hundis

Hundis are also one of the types of negotiable instruments. Usually, hundis are like a bill of exchange but sometimes they are found in the form of promissory note. A hundi differs from a bill, because a bill may include a hundi but hundi does not include a bill of exchange. The function of both instruments are similar. They are used to raise a loan for necessity or requirements in the field of business.

Hundi are categorised mainly into two types.

- a. Darshani or demand hundi:- it is payable at sight, like a demand bill. Such type of hundi must be presented for payment within the reasonable time of receipt by the holder. In case of a loss caused to the drawer by the delay in presentment it falls on the holder of the instrument.
- b. Muddati or time hundi:- It is payable after a specified period, after the date of sight. It is like a time bill.

The hundi instrument is in practice in the business field, it comes under the customary rule of business law. Besides this there are different types of domestic and foreign hundis, which are in practice as to the demand of nature of business.

Parties to negotiable instruments

- a. parties to promissory note- maker, payee, endorser and endorsee.
- b. parties to bill of exchange- drawer, acceptor or drawee, acceptor for honour, endorser and endorsee.
- c. Parties to cheque- Drawer, drawee (banker) payee, endorser, endorsee.

Holder

Who is holder?

The holder is a party of a bill of exchange, promissory note or cheque. It means any person who is (i) legally entitled to the possession of the instrument, and (ii) to receive or recover the amount due thereon from the parties liable thereto. That is either the payee or the endorsee of the instrument. The finder of a lost bill of exchange payable to a bearer or a person in wrongful possession of such instrument is not legally regarded as a holder. i.e. a cheque is issued in the name of Mr A the person named on it is the holder. The title holder may pass from person to person. The transferee or endorsee is also the holder.

NIA SE. 2(K) defines that- A holder is a person entitled to the possession of the instrument in his own name and to receive or recover the amount due thereon from the parties. To be a legal holder he has to fulfil two conditions.

- a. Entitle to possession.
- b. Entitle to receive or recover amount.

Holder in due course

Basic features of holder in due course:- A holder in due course means any person who for consideration becomes the possessor of an instrument, if payable to bearer or the payee or endorsee thereof, if payable to order, before the amount of instrument becomes payable and without having sufficient cause to believe that any defect is existed in the title of the person from whom he derived his title.

To be treated as a holder in due course a person has to prove that:

1. he has given the instrument for valuable consideration.
2. he has become a holder of the instrument before its maturity.
3. he has become the holder of the instrument in good faith.
4. the instrument in his hands was complete legally.
5. he must be a holder legally or entitle to possess the instrument.

A person can not be a holder in due course if:

- the instrument is obtained by gift, unlawful means or unlawful consideration.
- the instrument is obtained after its maturity.
- it is suspicious that the title of the transferer is defective.

A holder in due course means the holder who takes the instrument in good faith for value before it is overdue or out-law. The person who has given consideration is a holder, but it is not necessary to be adequate. A holder in due course is an important party to discharge the contraact.

Payment in due course: payment in due course means payment in accordance with the tenor of the instrument in good faith and without negligence to the possessor of instrument. Payment is due course said when it is paid: a. in accordance with the apparent tenor. b. to the possessor of the instrument c. in good faith without any negligence and foreign instrument.

Rights / privileges of a Holder in Due Course.

As an important party of an instrument a holder in due course acquires some certain exclusive privileges by the law. the privileges of a holder in due course are as follows;

1. A holder in due course can get a better title than that of the transferor.
2. Inchoate stamped instrument.
3. Liability of prior parties to holder in due course.

4. Right to suit.
5. Acceptance of bill drawn in fictitious name.
6. Instrument delivered conditionally is negotiable.
7. Instrument is cured from all defects by a holder in due course.
8. Instrument obtained by unlawful means or for unlawful consideration.
9. Estoppel against denying original validity of instrument.
10. Estoppel against denying capacity of payee to endorse.
11. Endorser not permitted to deny the capacity of prior parties.
12. Except otherwise provided, all the holders are holders in due course.

Acceptance

Acceptance is the assent of an acceptor, maker, drawee or other party. It is one of the purposes of presenting of a negotiable instrument. Acceptance is done by the act of signification on the instrument with an assent of drawee. After acceptance, the drawee becomes responsible. Mere possession in the hands of a drawee is not regarded as an acceptance. And it is done in accordance with the law and custom of business.

It is only the bill of exchange that can be presented for acceptance, but every bill should be accepted. Those bills that have a fixed time prescribed or payable on demand need not be presented for acceptance. Acceptance is necessary to make the parties liable, in the following purposes of the bill of exchange.

- Acceptance in order to fix the maturity of the instrument.
- Acceptance before presenting the bill for payment, if it is expressly stipulated.
- Acceptance is made if presentation is optional, and provides additional security to bill of holder.

The following essentials are necessary for a valid acceptance.

1. acceptance must be made in writing,
2. it must be signed by the drawee or his agent,
3. it must appear on the bill/instrument,
4. it must be completed by delivery to the holder or by notice,
5. it must be within a reasonable time, if the time is not fixed,
6. it must be made in the drawee's office, if place is not specified.

Modes of Acceptance

Acceptance may be general or qualified:

- a. General acceptance:- when a drawer makes an acceptance without adding any qualification or condition there is a general or absolute acceptance.

b. **Qualified acceptance:-** When a condition or qualification is added to the asset of the drawee there is a qualified acceptance. It is made in express terms which change the effect of the bill. Such an acceptance is dependent upon an events happening. A qualified acceptance varies from a partial acceptance, the bill is drawn by two or more drawees, and the acceptance is qualified as to time, place or amount.

Discharge of Liability

The discharge means release from the liability. Here discharge of liability means the modes of being free from the contractual or legal liabilities of the negotiable instrument. After the issue of a negotiable instrument, it carries a liabilities to pay a certain sum of money to a holder, when this obligation is satisfied, the instrument is said to be discharged. Thus a negotiable instrument is to be discharged when all the rights are extinguished properly.

Generally, discharge in negotiable instrument is used in two sense; a. discharge of the instrument itself, and b. discharge of the parties to the instrument.

a. discharge of the instrument itself:- The instrument is discharge when it ceases to be negotiable. Chapter 5 of NIA has made provisions in this regard. An instrument is ceased when duly made payment, presented after lapse of time or any other modes.

1. **By payment in due course:-** The natural and common mode of discharge of instrument is payment in due course. In due course means negotiation of the instrument as accordance to the rules and within the negotiable time, in good faith by the valid parties.

- If the payment made with apparent tenor of the instrument.
- If the true holder possesses the instrument.
- If the payment made in good faith and without any defect in the title of the instrument.
- if the payment made to the capable party having authority.

2. **By the party primarily liable becomes holder:-** where maker of the promissory note or acceptor of a bill of exchange becomes holder at or after its maturity in his own right, the instrument discharges. It means he has an absolute title and does not hold it conditionally or as an agent.

3. **By the act as of general contract:-** The instrument may be discharged by operation of law in case of insolvency, lapse of time, limitations under statute,

as that of a general contract. The stranger party may not raise any defence against a holder in due course.

4. By material alternation:- An instrument is discharged when the primarily liable party is discharged by material alteration in the instrument or by lapse of time making the debt time barred under certain rule.

5. By cancellation of the instrument:- Where the holder cancels or he waives the right with the intention to release the liable party thereon from the liability, the instrument automatically discharges.

b. Discharge of the parties to the instrument:- Any party or parties to the instrument are discharged from their liabilities under certain circumstances.

1. By cancellation:- When the holder of the instrument or his agent deliberately cancels the name of the drawer, acceptor, or endorser of the instrument that shall be discharged from the liability. Se. 56 of the NIA provides those conditions.

- if holder intentionally cancels the name of acceptor or endorser with the intent to discharge him, to such holder and all parties claiming through such holder.

- if a holder thereof who otherwise discharges such acceptor or endorser or drawer to all parties deriving title under such holder after notice of such discharge.

- if the instrument is payable to bearer or has been endorsed in blank and such drawer, acceptor or endorser makes payment in due course of the amount due thereon, is discharged to all concerned parties thereto, related with the instrument.

2. By payment:- According to se. 58 all the rights of action on an instrument are extinguished where payment due thereon is made in due course to the person legally entitle to it. A drawee is discharged from the liability, in case of a bearer's cheque by payment in due course to the bearer thereof and in the case of a cheque payable to order purports to be endorsed by or on behalf of the payee, by payment in due course.

3. By release:- Se. 58 provide that where the holder of an instrument discharges any party by any method other than the cancellation, such as by separate mutual agreement the party so discharged and all parties subsequent to him are discharged from their liability.

4. By giving additional time:- Se.57 where the holder allows the acceptor of an instrument a period of more than two days exclusive of public holidays to consider wherever he will accept the same, all prior parties who have not given

consent to such allowance, are thereby discharged from the liability to such holder.

5. BY acceptance with conditions:- Se. 60 provide that where a draft drawn by one office of a bank upon another office of the same bank for a sum of money payable to order on demand purports to be endorsed by or on behalf of the payee, the bank is discharged by payment in due course.

6. by fraudulent acts:- Se. 61 provide that some fraudulent acts, (such as alteration without consent or scratching or erasing any word/alphabet) has been made in the instrument may cause discharge from the parties concerned. Provided an explanation in the same section 61 that any functions of alteration or scratching and erasing in a way that another meaning in the negotiable instrument to be given or the appearance of the instrument to be changed or the liability of the concerned parties to be changed.

7. All parties to be discharged:- Where an instrument which has been negotiable in, at or after maturity, held by the acceptor in his own right, all other parties shall be discharged from liability related with that instrument.

